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NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 30th September, 1963 :—

Issue No.	No. and Date	Issued by	Subject
186	S. O. 2797, dated 27th September, 1963.	Ministry of Finance	Directives that an application for the issue of a certificate under the sub-rule (2) of rule 126-HH with rule 126X of the Defence of India Rules, 1962.
	S.O. 2798, dated 27th September, 1963.	Do.	Certificate to carry on business as Goldsmith.
187	S. O. 2799, dated 28th September, 1963.	Ministry of Labour & Employment.	Determining that the rate of Emigrant Labour Cess to be levied.
188	S.O. 2800/IECA/3-4A/7/63, dated 30th September, 1963.	Ministry of International Trade.	The Imports (Control) 12 Amendment Order, 1963.
189	S. O. 2801/GDDL/R/5/1/63, dated 30th September, 1963.	Ditto.	Directives that all Orders made by that Government under the Imports and Exports (Control) Act, 1947 (18 of 1947), shall extend to and come into force in the Union territory of Goa, Daman and Diu w.e.f. the 1st October, 1963.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

PART II—Section 3—Sub-section (ii)

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administrations of Union Territories).

ELECTION COMMISSION, INDIA

New Delhi, the 27th September 1963

S.O. 2862.—It is hereby notified for general information that the disqualification under clause (c) of section 7 of the Representation of the People Act, 1951, incurred by the person whose name and address are given below, has been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section of the said Act:—

SCHEDULE

Name and address of the disqualified candidate	Serial No. and name of constituency	Commission's notification No. and date under which disqualified
1	2	3
S hri Braja Mohan Bhattacharjee, P.O.-Siliguri, District Darjeeling, West Bengal	3-Darjeeling	WB-P/3/62 (II) dated the 21st July, 1962.

[No. WB-P/3/62 (11-R).]

By Order,
PRAKASH NARAIN, Secy.

New Delhi, the 4th October 1963

S.O. 2863.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the order pronounced on the 9th September, 1963, by the Election Tribunal, Patna, in Election Petition Nos. 177 and 296 of 1962.

IN THE COURT OF ELECTION TRIBUNAL, PATNA.**PRESENT:**

Shri P. K. Sarkar, Retired Judge of the Calcutta High Court.

The 9th day of September, 1963

ELECTION PETITION NO. 177 OF 1962.

Eknarain Lal Das—Petitioner

Versus

(1) Bhupendra Narain Mandal (2) Ramanugrah Jha (3) Lalit Narain Mishra—
Respondents.

AND

ELECTION PETITION NO. 296 OF 1962

Mahendra Mishra—Petitioner.

Versus

1. Bhupendra Narain Mandal
2. Ramanugrah Jha
3. Lalit Narain Mishra } —Respondents.

For the petitioners:—Shri N. C. Chatterjee, Shri J. C. Majumdar and Shri K. P. Verma, Advocates.

For the Respondent No. 1:—Shri B. K. Banerjee, Shri Sidheswari Prasad Sinha and Shri Ratneshwar Prasad Singh, Advocates.

For the Respondent No. 2:—Shri Tarkeshwar Dayal, Advocate.

For the Respondent No. 3:—Shri S. N. Mishra and Shri Shyam Nandan Prasad Sharma, Advocates.

JUDGMENT

1. These two election petitions against the same respondents have been tried together under section 87 of the Representation of the People Act, 1951 because they relate to the same election and the same judgment will govern both of them. The election which has been called in question in these petitions is that of the Saharsa Parliamentary Constituency of the House of the People held in February 1962. This constituency comprised six constituencies of the Bihar Legislative Assembly. The petitioner in each case is an elector duly registered in the electoral roll of the said constituency. Respondents No. 1, 2 and 3 in each case are the three candidates who had contested the election from that constituency and the respondent No. 3 was the sitting member who had been returned from the said constituency in the previous election. The nomination papers of the three respondents were accepted after scrutiny on the 22nd January, 1962, the polling was held on three dates, viz., the 18th, 21st and 23rd February, 1962, and the result was announced on the 28th February, 1962 when the respondent No. 1 was declared duly elected. The election petition No. 177 was presented to the Election Commission on the 11th April, 1962 and election petition No. 296 was presented on the 16th April, 1962.

2. The main ground on which the election has been called in question in both the petitions is the commission of corrupt practices by the respondent No. 1, his election agent and his agents with the consent of respondent No. 1 and his election agent by making appeals on the ground of caste to voters of the Yadav community to which the respondent No. 1 belongs. It is alleged that by constant propaganda and by distribution of pamphlets and leaflets making caste appeal and by threat of social ostracism the voters of the Yadav caste who constituted the majority in two of the six Assembly Constituencies comprised within this constituency and also formed an appreciable number in the remaining four Assembly constituencies were antagonised against the respondent No. 3 and unduly influenced to support the respondent No. 1. Similar allegations of appeal to Brahmin voters on the ground of caste and religion have been made in both the election petitions against the respondent No. 2 who is a Brahmin and it has been stated in election petition No. 296 that though he wanted to withdraw from the contest, he was induced by the respondent No. 1 under an offer of compensation not to do so, so that he could further the election prospects of the latter by splitting up the votes of respondent No. 3 and withdrawing from him the support of the Brahmin voters. It is also stated that many false statements were circulated against respondent No. 3 so as to make him unpopular. Certain printed pamphlets and leaflets said to have been issued and distributed by respondents Nos. 1 and 2 throughout the constituency making such appeals on the ground of caste and religion and containing false statements against respondent No. 3 have been enclosed with the petitions and other particulars regarding the corrupt practices have been mentioned in the Annexures thereto.

3. Another ground for setting aside the election which is common to both the election petitions is that the Returning Officer contravened the provisions of section 84 of the Representation of the People Act, 1951 and Rules 53 and 56 of the Conduct of Election Rules, 1961 in the matter of counting of votes inasmuch as he wrongly rejected a large number of votes polled in favour of respondent No. 3 without giving an opportunity to the latter's counting agents to inspect the ballot papers and improperly received void votes cast in favour of respondent No. 1. It is also stated that in the course of sorting many ballot papers of respondents No. 2 and 3 were mixed up with the ballot papers of respondent No. 1. The respondent No. 3 has been defeated by 15,300 votes and it is alleged that the total number of his rejected votes exceeded that margin.

4. Two additional grounds for setting aside the election have been taken in election petition No. 177. One is that the respondent No. 2 was disqualified as a Government servant for being nominated for election and that the improper acceptance of his nomination paper had materially affected the result of the election. Another is that the respondent No. 1, his election agent and his agents with the consent of respondent No. 1 and his election agent had hired and procured vehicles for carrying voters to the polling stations and thereby committed corrupt practices under sub-section (5) of section 123 of the Representation of the People Act, 1951.

5. On the above grounds the petitioners pray in both the petitions that the election of respondent No. 1 should be declared void and set aside and that the respondent No. 3 should be declared duly elected.

6. All the three respondents have appeared in both the election petitions and filed written statements. The respondent No. 3 has supported the case and the reliefs sought for by the petitioners. He has stated that but for caste propaganda of the respondents No. 1 and 2 he would not have been defeated in the election.

7. The respondent No. 2 has denied that he was disqualified for being nominated as a candidate for election and stated that he had been compulsorily retired from Government service long ago on 12th February 1948. He has next denied that he was not a serious candidate and wanted to withdraw from the contest but was induced by the respondent No. 1 not to do so and worked in his interest. He has stated that he had been nominated for election by the Swatantra party and that he had contested the election in his own interest. He has finally denied that he made any appeal to voters on the grounds of religion and caste or had printed, published or distributed, or was in any way connected with the printing, publication or distribution of, the leaflets bearing his name which are enclosed with the election petitions. He has, however, supported the petitioner's case that appeals on the ground of caste were made by the respondent No. 1 to voters of the Yadav caste and also the case that the counting of the ballot papers was done in contravention of the relevant provisions of the Representation of the People Act, 1951 and the Conduct of Election Rules, 1961. He has no objection to the election being declared void but he opposes the prayer of the petitioner that the respondent No. 3 should be declared duly elected.

8. The respondent No. 1 in his written statements has denied the allegations of contravention of the provisions of the Representation of People Act, 1951 and the conduct of Election Rules, 1961 by the Returning Officer in the matter of counting of votes and all the allegation of corrupt practices mentioned in the petitions as against him. He has next denied that he induced the respondent No. 2 not to withdraw from the contest under an offer of compensation or that he had made common cause with him to further his own election prospects and defeat the respondent No. 3 and has stated that if the respondent No. 2 had actually withdrawn from the contest he would have been returned with a bigger margin of votes. He has denied that he hired or procured any vehicles for carrying voters and finally denied that he or his election agent or any of his agents made any appeals to Yadav voters on the ground of caste or was in any way responsible for or connected with the printing, publication or distribution of the offending leaflets enclosed with the petitions. His case is that his election propaganda was made solely on the basis of the programme of the Socialist party to which he belongs and that the party programme forbade all caste appeals. He took certain preliminary objections to the election petitions to the effect that they and the annexures thereto were not properly verified and were not accompanied by affidavits in the prescribed form and that they did not comply with the provisions of section 83 of the Representation of the People Act, 1951. In election No. 296 further objections were taken that the said petition was barred by limitation and did not comply with the provisions of section 81 of the Representation of the People Act, 1951.

9. Issues were framed in both the election petitions on 13th September 1962 before the respondent No. 2 had filed his written statements. On 5th October 1962 written statements were filed by him and one issue was amended at his instance. On the same day the respondent No. 1 filed a petition in election petition No. 296 enclosing therewith a copy of the petition received by him from the Election Commission and stated that the said copy had not been attested by the petitioner under his own signature to be a true copy of the petition, as required by section 81(3) of the Representation of the People Act, 1951. He prayed that the said election petition should be dismissed on this ground. On 16th October 1962 the petitioners in both the cases filed petitions for amendment furnishing further particulars of the corrupt practices mentioned, or clarifying the particulars already furnished, in the annexures to the petitions. These petitions for amendment together with some of the preliminary issues were heard by me on 14th November 1962, 16th November 1962 and 30th November 1962 and an order was passed on 11th December 1962. Subsequently in the course of hearing arguments an issue was struck out and another amended in election petition No. 296.

10. The following are the issues in the two petitions:—

Election petition No. 177

(Issues No. 1 to 9).

Issue No. 1.—Are the allegations of corrupt practices supported by an affidavit in the prescribed form, as required by the proviso to section 83 of the R.P. Act, 1951? If not, what should be the effect thereof?

Issue No. 2.—Are the election petition and the annexures thereto properly verified?

No. 3.—Does the election petition comply with the provisions of section 81 of the R.P. Act, 1951?

No. 4.—Has there been any violation of the provisions of Rules 53 & 56 of the conduct of Election Rules, 1961, as alleged in the petition?

Has the result of the election been materially affected thereby?

No. 5.—Was the respondent No. 2 disqualified under Art. 102(1)(a) of the Constitution, Was his nomination improperly accepted and has it materially affected the result of the election?

No. 6.—Did the respondent No. 1, his election agent and other persons with their consent commit corrupt practices under sub-sections (1), (2), (3), (3A), (4) and (5) of section 123 of the R.P. Act, 1951, as alleged in the petition and the annexures thereto?

No. 7.—Did the respondent No. 2 commit the corrupt practices alleged in the petition in the interests of the respondent No. 1? Has the result of the election been materially affected thereby?

No. 8.—Is the election of respondent No. 1 void?

No. 9.—Did respondent No. 3 obtain a majority of the valid votes? Can he be declared duly elected?

Election Petition No. 296

(Issues No. 1 to 9)

Issue No. 1.—Is the election petition barred by limitation?

Issue No. 2.—Are the allegations of corrupt practices supported by an affidavit in the prescribed form, as required by the proviso to section 83 of the R.P. Act, 1951? If not, what should be the effect thereof?

No. 3.—Are the election petition and the annexures thereto properly verified?

No. 4.—Does the election petition comply with the provisions of section 81 of the R.P. Act, 1951?

No. 5.—Has there been any violation of the provisions of rules 53 and 56 of the Conduct of Election Rules, 1961, as allcged in the petition? Has the result of the election been materially affected thereby?

No. 6.—Did the respondent No. 1, his election agent and other persons with their consent commit corrupt practices under sub-sections (1), (2), (3), (3A), (4) of Section 123 of the R.P. Act, 1951, as all-geed in the petition and the annexures thereto?

No. 7.—Did the respondent No. 2 commit the corrupt practices alleged in the petition in the interests of and in collusion with respondent No. 1? Has the result of the election been materially affected thereby?

No. 8.—Is the election of respondent No. 1 void?

No. 9.—Did respondent No. 3 obtain a majority of the valid votes? Can he be declared duly elected?

11. The following is the order passed by me on 11th December 1962 in the matter of some of the preliminary issues and the petitions for amendment:—

The preliminary issues in these two election petitions which arise out of the same election, viz., that of Saharsa Parliamentary Constituency of the House

of the People, and in which, though the petitioners who are voters registered in the electoral roll of the Constituency are different, the respondents are the same have been heard together and this same order will govern both. The preliminary issues heard excepting one are also common to both.

12. The first preliminary issue which has been framed in case No. 296 only runs as follows:—1. Is the election petition barred by limitation? This election petition was filed, according to the endorsement thereon, on the 16th April, 1962. The result of election having been declared on 28th February 1962 it was intended that the petition was barred by limitation. A reference was, however, made to the Secretary, Election Commission, and it appears from his letter No. 82/296/62/7/842 dated the 22nd November, 1962, which has been kept with the record of this case that the office of the Commission was closed on Saturday and Sunday, the 14th and 15th April, 1962. That being so, the petition which was filed on the opening day after these holidays should be deemed to have been filed in time.

13. Issue No. 2 of case No. 296 which is the same as issue No. 1 of case No. 177 runs as follows:—

1. Are the allegations of corrupt practices supported by an affidavit in the prescribed form, as required by the proviso to section 83 of the R.P. Act, 1951? If not, what should be the effect thereof?

The proviso to section 83(1) of the Representation of the People Act, 1951, to be hereafter called the Act, requires that where the petitioner alleges any corrupt practice, the petition shall be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. This proviso is new and was introduced by Act 40 of 1961. No form of the affidavit was, however, prescribed in 1961, but by a notification published in the Gazette of India Extraordinary dated February 27, 1962, a new rule No. 94A, was introduced in the Conduct of Election Rules, 1961 and the form of this affidavit was prescribed. The form requires that the corrupt practices should be named in the affidavit and that the paragraphs of the petition and of the schedules which are true to the knowledge of the deponent and those which are true to his information should be separately sworn to. In these two petitions there are allegations of corrupt practices and though at the end of the annexures thereto an affidavit has been filed in each case, it is not in the form prescribed by Rule 94A.

14. In case No. 177 the material portion of the affidavit is in this form:—

"That the contents of paragraphs 16, 16(a), 16(b), 16(c) and 17 and the contents of Annexures A, B, B-1, B-2, B-3, C, D and D-1 are based on information received from voters and agents of Respondent No. 3 which are believed to be true."

The corrupt practices have not been named in this affidavit. In case No. 296 the affidavit names the corrupt practices but states in the first paragraph that the statements in paragraphs 20, 22, 23 and 24 of the petition and those in the schedules annexed thereto, viz., C, E, F and G are partly true to the knowledge of the deponent and in the second paragraph that the statements in paragraphs 19 and 21 of the petition and the schedules B and D and the statements in paragraphs 20, 22, 23 and 24 partly and the contents of the schedules C, E, F and G are true to his information. So in this affidavit certain paragraphs have been sworn to as partly true to knowledge and partly true to information. The affidavit does not, therefore, conform to the prescribed form.

15. The question now is what should be the effect of this non-compliance with the above proviso to section 83(1) of the Act. This question has arisen before me in certain other election petitions also and I have held that since non-compliance with the provisions of section 83 has not been made penal u/s 90(3) of the Act, the proviso cannot be said to be mandatory. This follows from the decision of the Supreme Court in the case of *Jagan Nath Vs. Jaswant Singh*, reported in A.I.R. 1954 S.C. 210. There the Supreme Court observed as follows:—

"The general rule is well-settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well-settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law.

None of these propositions however has any application, if the special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it.

"It is always to be borne in mind that through the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safe-guard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequences or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected."

16. The original Act of 1951 included section 83 in the penal provisions of the Act contained in sections 85 and 90 and prescribed the dismissal of an election petition which did not comply with the provisions of section 83, but by an amendment of the Act in 1956 section 83 was excluded from these penal sections. In consequence of this amendment we must now take it that the Legislature did not intend to impose any penalty for non-compliance with the provisions of section 83. That being the position, on the test laid down by the Supreme Court in the above decision, the proviso in question can not be construed to be mandatory and the fact that the affidavits filed do not correspond to the form prescribed by the new Rule 94 A would not oust the jurisdiction of the Tribunal to try the cases of corrupt practices alleged in the petitions. To hold otherwise would amount to ignoring the principle laid down by the Supreme Court in the second paragraph of the observations quoted above and would defeat one of the essential objects of the election law emphasised in that paragraph, *viz.*, to safe-guard the purity of the election process and to ensure that people do not get elected by flagrant breaches of that law or by corrupt practices.

17. I hold accordingly that the proviso in question is not mandatory and that the petitioners are not debarred from agitating the question of corrupt practices before the Tribunal in consequence of non-filing of affidavits in the prescribed form in support of the allegations thereof.

18. The third issue of case No. 296 which is the same as the second issue of case No. 177 is as follows:—

Are the election petition and the annexures thereto properly verified?

In case No. 177 the verification of the petition is in this form : "I..... declare that the contents of paragraphs.... are true to my knowledge and that of paragraphs are based on information received from the voters and the agents of respondent No. 3 which are believed to be true and that of paragraphs are submissions to the Court". The annexures to this petition are all verified as being based on information received from the voters and the agents of respondent No. 3 which are believed to be true. All these verifications are in accordance with the requirements of Order 6 Rules 15 C.P.C. and since section 83(1) (c) of the Act provides that the election petition and the schedules or annexures thereto should be verified in the manner laid down in the Civil Procedure Code for the verification of pleadings, there can be no objection to the above verifications.

19. In case No. 296, however, the verification is defective because certain paragraphs of the petition, *viz.*, 8 and 22 to 24 have been verified as partly true to knowledge and partly upon information received and believed to be true and the annexures have also been similarly verified as partly true to personal knowledge and partly true to information. This mode of verification is against the provisions of 0:6 R.15(2) C.P.C. which require that the person verifying shall specify by reference to the numbered paragraphs of the pleadings what he verifies on his own knowledge and what he verifies upon information received and believed to be true. A paragraph cannot, therefore, be verified as partly true to knowledge and partly true to information.

20. The petitioner in this case has admitted by a petition filed on 16th November, 1962, that the verifications are defective and has prayed that the verifications may be amended by striking out the words "partly true to my knowledge" wherever they occur therein. Objection has been taken to the amendment, but it is now well-settled that the Tribunal has jurisdiction to allow such amendment and reference may be made in this connection to the decision of the Supreme

Court in case of Bhikaji Vs. Brijlal, A.I.R. 1953 S.C. 610. I accordingly allow the verifications of the election petition and the annexures thereto in case No. 296 to be amended according to this petition.

21. The petitioner will, however, have the liberty, as prayed for by him, to raise at the trial any objection which may be available in law to him in consequence of this amendment.

22. Issue No. 4 of case No. 296 which is the same as issue No. 3 of case No. 177 runs as follows:—

Does the election petition comply with the provisions of section 81 of the R.P. Act?

23. In case No. 177 this issue was not pressed. In case No. 296 an objection has been subsequently taken that the copy of the election petition filed before the Election Commission which was sent by the Commission to respondent No. 1 was not attested by the petitioner under his own signature to be a true copy of the petition, as required by section 81(3) of the Act. With the consent of both the parties this issue is left over to be decided at the trial as it would involve taking of evidence.

24. In both the cases the petitioner has applied for amendment of some of the annexures to the election petition to which objection has been taken by respondent No. 1 and this matter has also been heard along with the preliminary issues. In case No. 177 the petitioner mentioned in annexure B the names of the persons who committed the corrupt practice alleged in paragraph 16(b) of the petition with the dates and the places of commission thereof. The dates were not, however, mentioned village by village in every case so as to indicate on which date the alleged corrupt practice was committed in a particular village. With a view to clarify the position the petitioner filed on 16th October, 1962 a petition for amendment specifying separately the date of commission of the corrupt practice in each of the villages mentioned in the original annexure B. The proposed amendment, is thus a mere rearrangement of the particulars already contained in the original annexure B and though it has been objected to, I see no valid ground for the objection. Such amendment is within the power of the Tribunal to allow under section 90(5) of the Act.

25. In case No. 296 the petitioner alleged in paragraph 20 of his petition that the respondent No. 1, his election agent and other persons with his consent threatened the voters of the Yadav caste with social ostracism, if they did not vote for respondent No. 1 and in annexure C to the petition particulars of this corrupt practice were furnished with the names of the persons who addressed meetings to that effect. Such meetings, it was stated, were addressed throughout the Assembly Constituencies of Madhipura, Singheshwar, Tribeniganj, Pratapganj and Kishanpur. Again in paragraph 21 of the election petition it was alleged that the respondent No. 1, his agents and other persons with his consent appealed to the voters belonging to Yadav caste on the ground of caste and in annexure D to the petition were furnished particulars of this corrupt practice with the names of the persons who addressed meetings and distributed a hand bill making such appeal. It was stated that these meetings were addressed throughout the same five Assembly Constituencies. On 18th October, 1962 the petitioner filed a petition for amendment specifying the villages within the said Assembly Constituencies where such meetings were addressed with the date of the meeting in each village and his prayer is that the names of the said villages and the dates might be added to annexures C and D of the election petition for the purpose of amplifying the particulars of the corrupt practices enumerated therein.

26. Objection has been taken to these amendments on account of the delay and also on the ground that those amendments seek to introduce new particulars. I can not, however, agree with the view that the proposed amendments seek to introduce new particulars or instances of the corrupt practices alleged in the petition or involve in any way a change in the petitioner's case. The instances of the corrupt practices alleged in the paragraphs 20 and 21 of the petition were all given in the original annexures C and D where, however, a general statement was made that the meetings in which appeals were made on the ground of caste or Yadav voters were threatened with ostracism by the persons named had been addressed throughout the five Assembly Constituencies and the proposed amendments now seek to specify the names of the villages included in the said Constituencies where actually such meetings were addressed with dates. The utmost that can be said is that the amendments seek to supply more specific particulars and such amendment is certainly covered by the provisions of section 90(5) of the

Act. Even if these be considered to be new instances of the corrupt practices alleged, it would still be within the power of the Tribunal to allow such amendment under that section.

27. The Supreme Court laid down in the case of *Harischandra vs. Triloki Singh*, reported in A.I.R. 1957 S.C. 444, that the Tribunal has authority to allow an amendment even when it involves inclusion of new instances, provided they relate to a charge contained in the election petition and that it would be competent to the Tribunal to allow an amendment giving for the first time instances of corrupt practice, provided such corrupt practice has been made a ground of attack in the petition. It is true that this decision was given under the old Act when the power of amendment was contained in section 83(3) of the Act and was worded differently from the present section 90(5). Under the old section 83(3) the Tribunal was empowered to order further and better particulars in regard to any matter referred to in the list filed with the petition to be furnished. The present section 90(5) does not contain the words "further and better particulars" but it gives the Tribunal power to allow the particulars of any corrupt practice alleged in the petition to be not only amended but also amplified, the only limitation being that no amendment should be allowed which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. This section was considered by the Mysore High Court in the case of *Sanjappa Vs. Shivamurti*, A.I.R. 1958 Mysore 120, and it was held that "amplification" means the act of increasing or enlarging and that if the particulars or instances of any corrupt practice may be amplified, that means that such particulars or instances may be increased or, in other words, more instances can be given of such corrupt practice. It is therefore clear that the petitioner is entitled to add the names of the villages, which are all included in the five Assembly Constituencies mentioned in the original annexures C and D, with dates by way of amplification of the particulars under section 90(5) of the Act, even if they are considered to be new instances of the corrupt practices alleged which they are not in my opinion.

28. My attention was drawn to a decision of the Madhya Pradesh High Court in the case of *Jamuna Prasad Vs. Ram Nivas*, reported in A.I.R. 1959 Madhya Pradesh 226, in which it was held that where there is a long delay in making an application for amendment and the written statements on the original application were already filed the amendment should not be allowed. The facts of that case show, however, that this was not an amendment of the particulars of any corrupt practice. In the original petition a corrupt practice was alleged to have been committed in the interests of respondent No. 6 who was a defeated candidate and by the amendment the petitioner sought to change respondent No. 6 to respondent No. 1 who was the returned candidate on the plea of correction of clerical and typing errors in the petition. This amendment was disallowed by the Tribunal as not *bona fide*. This was a different matter altogether and did not concern amendment of the particulars of any corrupt practice u/s. 90(5) of the Act. This decision has therefore no bearing on the point before me. I hold accordingly that the amendments proposed in both the cases are quite in order and within the power of the Tribunal to allow under section 90(5). I can not also find that there has been any great delay in the matter. The amendments are accordingly allowed and in case No. 177 the petitions for amendment be treated as part of the original annexure B and in case No. 296 the petition for amendment be treated as part of the original annexures C and D.

29. After this order had been passed the respondent No. 1 filed writ petitions in the High Court of Patna against the order but the said petitions were rejected on 28th January, 1963. Recording of evidence was commenced thereafter from 20th February, 1963. The petitioners examined 51 witnesses, the respondent No. 1 examined 67 witnesses and the respondent No. 2 examined 4 witnesses. The hearing was concluded on 31st July, 1963.

30. I now proceed to consider the remaining issues in the two cases. Issue No. 4 of Case No. 296 was left out of consideration at the preliminary hearing because the parties wanted it to be decided on evidence. The objection on this issue, as already stated, is that the copy of the election petition which was served on the respondent No. 1 by the Election Commission under section 86 of the Representation of the People Act, 1951 to be hereafter referred to as the Act, did not contain any attestation by the petitioner, as required by section 81(3) of the Act. The copy was filed in the Tribunal on 5th October, 1962 and the respondent No. 1 has given evidence that he received this copy from the Election Commission. The copy which is marked Ex. F does not bear any attestation that it was a true copy of the petition, though there is a signature of the petitioner

Mahendra Misra on the top attested by the Under Secretary to the Election Commission.

31. The petitioner's case on this point, as stated in a petition supported by an affidavit sworn by him and filed on 16th October 1962, is that he had filed with his election petition copies thereof duly attested under his signature on the starting page containing the cause title and the index. A true copy of this starting page containing the endorsement—"Attested to be true copies of Election Petition and Annexures"—with the signature of the petitioner was enclosed with this petition. It was also stated in the petition that the copy received by respondent No. 2 from the Election Commission contained the starting page with such endorsement and that copy was shown to me. The petitioner's suggestion is that the respondent No. 1 had taken out this starting page before filing the copy before the Tribunal. This suggestion was denied by the respondent No. 1. The petitioner has not deposed before me but his affidavit has been relied upon on this point.

32. The election petition No. 296 has got an index-sheet attached to it which forms its first page. Just below the index the number of copies supplied is mentioned and then there is an open space below which there is a signature of the petitioner. This index-sheet was treated as part of the petition and the seal of the Election Commission appears on it. It is very likely, therefore, that the copies supplied also contained copies of this index-sheet. The index was not of course obligatory and the election petition No. 177 contained no index-sheet. But if the petitioner in this case filed an index as part of the petition, the normal presumption would be that the copies of the petition also contained copies of the index. Though the copy served on the respondent No. 2 is not on the record, I remember that the said copy shown to me contained an endorsement of attestation to the same effect as contained in the true copy of the index-sheet filed with the petition, dated 16th October, 1962. This endorsement appears in the copy just below the index in the open space above the petitioner's signature. Though the petitioner has not been examined, his affidavit is there and in view of the circumstances mentioned there seems to be no adequate reason why it should not be relied upon. There was no prayer at any stage by the respondent No. 1 for cross-examining the petitioner on the statements made in the affidavit. It was contended that even if there was an endorsement of attestation on the copy of the index-sheet, it was not sufficient compliance with the provisions of section 81(3) and that the endorsement should have been made on every page of the copy, but the sub-section merely says that every copy "shall be attested by the petitioner under his own signature to be a true copy of the petition" and does not lay down that every page of the copy shall be attested in this manner. Whether the index-sheet was taken out before filing the copy, Ext. P., before the Tribunal or was mislaid in the course of transmission cannot be ascertained, but it is significant that this objection was not taken by the respondent No. 1 in his written statement which was filed on 27th August, 1962. There only a vague objection was taken that the election petition had not been filed in accordance with law without any reference to section to 81(3).

33. There is no suggestion that Ex. P. is not a true copy of the election petition. It contains corrections with initials of the petitioner and it also contains his signatures below the verifications and at other places as in the petition itself. The election petition was presented before the Election Commission by the petitioner himself, as the endorsements of the Commission will show, and the verifications were signed at New Delhi. The copies were apparently accepted by the Election Commission as true copies. The attestation of the copies as true copies was necessary more for the satisfaction of the Election Commission than of the respondents because under section 86(1) of the Act the Election Commission had to cause a copy to be published in the Gazette and a copy to be served by post on each respondent and it would not be unreasonable to presume that the Commission was satisfied about the correctness of the copies. If any defect in the matter of attestation had been noticed, the defect could have been rectified then and there since the petitioner had himself presented the election petition. The Election Commission had the power to dismiss the election petition under section 85 for non-compliance with the provisions of section 81(3) and the fact that it was not dismissed also suggests that no such non-compliance, as is now complained of, had been noticed by the Election Commission. It is true that this Tribunal has the power to dismiss the petition for such non-compliance under section 90(3) of the Act, notwithstanding that it has not been dismissed by the Election Commission under section 85, but from a consideration of all the facts and circumstances discussed above I am not satisfied that there was such non-compliance and I accept the petitioner's case on the point.

34. Issue No. 4 of Case No. 177 and issue No. 5 of Case No. 296.—These issues were not pressed and no evidence was adduced by the petitioner in either case that there was any irregularity in the matter of counting of votes or any violation of the provisions of section 64 of the Act and of Rules 53 and 56 of the Conduct of Election Rules, 1961. These issues are therefore answered in the negative.

35. Issue No. 5 of Case No. 177.—This issue was also not pressed. The respondent No. 2 gave evidence that he was formerly a member of the Bihar Civil Service but had retired. He did not mention the date of retirement but in the written statement the date is given as 12th February, 1948. His statement was not challenged in cross-examination and no evidence was adduced to the contrary. I therefore decide this issue in the negative.

36. Issue No. 6 of both the cases.—Of the different kinds of corrupt practice mentioned in this issue only two have been pressed. The allegations that the respondent No. 2 was induced by the respondent No. 1 not to withdraw from the contest under an offer of compensation, that the voters of the Yadav caste were unduly influenced by threat of social ostracism and that vehicles were hired or procured for carrying voters to or from polling stations were not pressed. The corrupt practices which have been seriously pressed in both the cases are under sub-sections (3) and (3A) of section 123 of the Act. The case of the petitioners is that the respondent No. 1 and his election agent Urmilesh Jha and also other agents with his consent made appeals to the voters belonging to the Yadav caste on the ground of caste. The respondent No. 1 himself belongs to this caste and the case is that he appealed to his caste-men to vote for him on the ground of caste and to refrain from voting for the respondent No. 3 who is a Brahmin by caste. The appeals are said to have been made by meetings and propaganda and also by distribution of printed handbills or leaflets. Copies of a printed leaflet containing such appeal said to have been distributed in several villages within the constituency were enclosed with the annexures to both the petitions and evidence has been given as to who got them printed and who distributed them.

37. The first question which arises for decision is whether this particular leaflet offends against the provisions of sub-section (3) of section 123. It has been contended by the learned Advocate for respondent No. 1 that it was an innocuous document and did not contain any caste appeal. It is in Hindi and an English translation of it has been made by witness No. 50 for the petitioners who is a graduate of the Patna University and is now attached to an English newspaper named the Indian Nation as a translator from English to Hindi and vice versa. Ex. 6 is one of the printed leaflets, the manuscript is Ex. 6(b) and the English translation made from this manuscript is Exh. 6(b)-1. It is headed as "An appeal to the Yadav brethren of Saharsa Parliamentary Constituency" and purports to have been issued by six persons of the Yadav caste. The following is the English translation of the leaflet:—

"Brothers,

It is a known fact that 30 per cent of the population of Saharsa District consists of Yadavs. It is no longer a mystery for anyone how the Congress has suppressed this caste in this General Election. They have gone even to the extent of denying ticket to our grand old leader Shri Shivnandan Prasad Mandal. How could all this happen? Surely, behind this is the hand of Pt. Rajendra Mishra and Pt. Lalit Narayan Mishra. With their machination three Brahmins have been given tickets for the State Assembly and one Brahmin for the Lok Sabha. This throws a challenge to all the backward communities, particularly to the Yadav caste of Saharsa District. It becomes our duty to accept this challenge.

"Keeping in view the above situation, it is our strong appeal to all Yadav brethren to launch vigorous election campaign against Shri Lalit Narayan Mishra, the Congress candidate, and to get elected in this election Shri Bhupendra Narayan Mandal, the rising Socialist leader of our caste.

Humbly yours,

1. Mahtab Lal Yadav
2. Kusam Lal Yadav—V. Gudia.
3. Munn Lal Yadav—V. Chakla Raharia.
4. Darbari Yadav—Nudia.
5. Vasudeo Prasad Yadav—Gudia.
6. Mahavir Mandal—Karanpatti.

38. So far as the correctness of the translation is concerned it has not been challenged excepting in one respect. Objection has been taken to the word "suppressed" in the second sentence. The correct translation, it is suggested, should be 'neglected' or 'ignored'. That would not make much difference in meaning. A grievance has been made in the leaflet of the neglect of the Yadav caste by the Congress in the general election by denial of Congress nomination to the old leader of the caste named Shibnandan Prasad Mandal. This gentleman was admittedly a member of the Bihar Legislative Assembly elected on Congress ticket at the 1952 and 1957 elections and was also one of the Ministers of the Bihar Government. It has been contended that this was a grievance against the authorities of the Congress and not against the respondent No. 3 and did not constitute an appeal on the ground of caste. But the leaflet clearly suggests in the very next sentence that behind this action of the Congress authorities was the hand of Rajendra Misra and Lalit Narayan Misra (respondent No. 3). Rajendra Misra is a cousin of respondent No. 3 and was President of the State Congress Committee. They are charged with machination in the interest of Brahmins because it is stated that as a result of their machination three Brahmin candidates had been given nomination for the State Assembly and one Brahmin for the Lok Sabha. This is described as a challenge thrown to the Yadav caste and to all backward communities of Saharsa district. The leaflet appeals to all Yadav caste-men to accept this challenge and to launch a vigorous election campaign against the respondent No. 3 and get the respondent No. 1 who is described as the rising Socialist leader of the Yadav caste elected in his place. This constitutes a clear appeal to the Yadav voters to vote for respondent No. 1, a member of that caste, on the ground of caste and to refrain from voting for respondent No. 3. It has been contended that the appeal is to vote for respondent No. 1 as the rising Socialist leader and that it is only incidentally that his caste has been mentioned. I cannot, however, construe the appeal in this manner and I am satisfied from the context and the language and tenour of the appeal that it was an appeal on the ground of caste to Yadav voters to vote for respondent No. 1 as a member of that caste. The words "rising Socialist leader" are words of description and the emphasis is not on those words but on the words "of our caste" at the end. The leaflet clearly offends, in my opinion, against sub-section (3) of section 123 and constitutes a corrupt practice. It also offends against sub-section (3A) of the section as it was calculated to promote feelings of enmity or hatred between the Brahmins and the Yadavs.

39. The next question is who got this leaflet printed. On this point the petitioners' case is that 5000 copies of the leaflet were got printed by Urmilesh Jha, election agent of respondent No. 1, from Mithila Art Press, Darbhanga. The name of the Press and the number of copies printed are mentioned in the leaflet itself together with the number of the Order and the date. The petitioners have examined Ramakant Mishra (witness No. 3) who is the manager of Mithila Art Press and has been so for eight or nine years past. He has produced the proof copy (Exh. 6a) and the final copy (Ex. 6) of the leaflet from his press. The proof copy contains the order for printing 5,000 copies passed by him with his signature and date 9th February, 1962, which corresponds to the date printed in the leaflet. He has also produced the order form of the press which contains the carbon copy of a receipt, dated 9th February, 1962, issued in the name of Sri Urmilesh Jha [Ex. 6(i)]. It shows that the total bill for the printing was Rs. 34.75 out of which Rs. 15 had been received as advance and the balance Rs. 19.75 was paid on 9th February, 1962, when the delivery of the leaflets was given. 5,000 copies are mentioned in it and the number of the order is 492 which corresponds to the number mentioned in the leaflet. His evidence is that one Bhubaneswar Biswas brought to the press the manuscript of the leaflet together with a letter from Urmilesh Jha and that one Tarakanta Jha whom he knew accompanied Bhubaneswar. He took the signatures of Bhubaneswar Biswas and Tarakanta Jha on the bottom of the second page of the manuscript which contained an order by Urmilesh Jha to print 5,000 copies, printed the leaflets on the strength of this order and the letter of Urmilesh Jha and gave delivery of 5,000 copies to, and received payment of the bill from, Bhubaneswar Biswas on 9th February, 1962. The signature of Bhubaneswar Biswas was taken on the order form and this signature appears on the carbon copy, Ex. 6-i. The witness has produced the letter which he received (Ex. 6c) and the manuscript (Ex. 6b) and proved that they including the names of the six persons described as "nivedaks" in the manuscript are in the hand-writing of Urmilesh Jha whose hand-writing he knows. On the top of the manuscript there is an endorsement giving the number of the order (492) with the date 9th February, 1962 and the date of delivery is mentioned as 9th February, 1962.

40. The following is an English translation of the letter (Ex. 6c-1) made by the same translator P.W. 50:-

"SOCIALIST PARTY (BIHAR)

District Branch

SAHARSA.

SAHARSA

Dated: 6-2-1962.

Letter No.

Dear Rama Kantji,

I am sending per bearer a manuscript of a hand-bill entitled 'An appeal to Yadav brethren of Saharsa Parliamentary constituency' written by me. This hand-bill bears the names of six persons including Shri Mahtab Lal Yadav as signatories. Consent of all these six men has been obtained. Bhupendra Babu, who is our party candidate, desires that this hand-bill should be printed outside Saharsa. Therefore, I am sending it to you to get it printed in your Press. Kindly print five thousand copies of it and send the same through the bearer of this letter. The bearer of this letter will make the payment.

Excuse me for the trouble.

Yours,

Urmilesh Jha,
District Secretary.

To

Rama Kant Mishra,
Manager, Mithila Art Press,
Darbhanga".

41. The respondent No. 1's case is that Urmilesh Jha did not get these leaflets printed and did not write or send to this press the letter or the manuscript and that these are forged and antedated documents. It was suggested to Ramakant Misra that these leaflets had been subsequently printed at the instance of respondent No. 3. It was also contended at the time of argument that the evidence of Ramakant Misra on the point should be rejected because it did not find place in any of the election petitions or the annexures thereto. It is true that the fact that Urmilesh Jha got these leaflets printed is not mentioned in the election petitions or the annexures and that in annexure D to election petition No. 296 it is stated that the six persons whose names the leaflet bears got the same printed from Mithila Art Press, Darbhanga, with the consent of respondent No. 1. This particular must be based on the leaflet itself which was published in the names of these six persons. But the facts—who actually placed the order for printing and who took delivery of the leaflets or paid the bill are matters which could not have been known without enquiry at the press and there is no evidence that these facts were within the knowledge of the petitioners when the election petitions were filed. The petitioner Eknarain Lal Das was examined but no question was put to him on the point and it was not suggested to him that he knew all these facts before filing his petition. Besides, I cannot agree with the contention of the learned Advocate for the respondent No. 1 that these matters were necessary to be stated in the petitions as material facts or particulars within the meaning of section 83 of the Act. The material facts on which the cause of action was based were the publication and distribution of the leaflets which constituted a corrupt practice and it was sufficient that the election petitions mentioned these and that the particulars in the annexures gave the names of the distributors and the places and dates of distribution. What Ramakant Misra has stated are matters of evidence and it was not necessary to set out these matters as material facts or particulars in the petitions. They are not material facts or particulars coming within the purview of section 83.

42. The suggestion that these leaflets were printed subsequently or after the election is falsified by clear and unimpeachable evidence, apart from the evidence of distribution of the leaflets, adduced by the petitioners proving the existence of the leaflets long before the dates of polling. Section 127A(2) of the Act provides

that no person shall print any election pamphlet-(a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom is personally known is delivered by him to the printer in duplicate; and (b) unless within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer together with one copy of the document—(i) where it is printed in the capital of the State, to the Chief Electoral Officer and (ii) in any other case, to the District Magistrate of the district in which it is printed. In view of these provisions Ramakant Misra must have taken the signatures of Bhubaneswar Biswas and Tarakan Jha on the bottom of the manuscript in attestation of the signature of Urmilesh and he has stated that after printing the leaflets he sent on 10th February, 1962, two copies of the same to the District Magistrate, Darbhanga with a letter. This letter (Ex. 6d) together with the two enclosed leaflets (Exs. 6c and 6f) were called for from the District Magistrate, Darbhanga and have been produced by an Assistant of his office who is witness No. 1 for the petitioners. Ramakant Misra has proved this letter to be in his handwriting. It is written on the printed letter paper of the press and bears date 10th February, 1962. It is described as the "Printers' Certificate". It states that the order for printing 5,000 copies of the enclosed 'pamphlet' had been placed by Urmilesh Jha of Socialist Party, Sharsa and the order number and the date are also mentioned. The letter contains an initial with the date 20th February, 1962 on the top which may be the date of the noting of the receipt of the letter in the District Magistrate's office. A suggestion was made to Ramakant that this letter had been subsequently and surreptitiously smuggled in the District Magistrate's office with the enclosed leaflets. This is an impossible suggestion and is not worth considering. Comment has been made on the fact that no despatch register or peon book has been produced to prove the actual despatch of the letter on 10th February, 1962 and the date 20th February, 1962 on the top has been relied upon as showing that it could not have been despatched on 10th February, 1962. But the fact that the letter was listed in the office of the District Magistrate on 20th February, 1962, is not conclusive as showing that the letter had been despatched on that date. The letter might have been received on 10th February, 1962 and not attended to till 20th February. In any case, even if the letter had not been despatched on 10th February, 1962 and had been received on 20th February, 1962 in the District Magistrate's office, this would be before the dates of actual polling in some Assembly Constituencies, these dates being 21st February, 1962, and 23rd February, 1962. This letter is therefore clear proof that these leaflets had been printed and were in existence before the election.

43. We have next the evidence of Gurusaran Singh, witness No. 34 for the petitioners who is the President of Saharsa District Congress Committee, that he had filed a petition of complaint addressed to the District Magistrate, Saharsa on 20th February, 1962, enclosing two copies of the printed leaflet—one of which he got at a place called Tribeniganj and another at a place called Chatapur where they were distributed by the workers of respondent No. 1 and which places he visited on 19th February, 1962 and 20th February, 1962. This complaint he took to the District Magistrate on 20th February, 1962 at Birpur where the letter was camping at the time and he directed the witness to file it before the S.D.O., Supaul and endorsed a written direction to that effect on the petition. He next took it to S.D.O., Supaul at Raghpur Camp on 21st February, 1962 and handed it over to him. This complaint together with the two enclosed leaflets was called for from the District Election Office, Saharsa and has been produced by witness No. 2 for the petitioners who is the District Election clerk. The complaint which is in Hindi bears on the margin an endorsement in English by the District Magistrate, Saharsa with his initial and the words "Camp Birpur" and date 20th February, 1962. The endorsement is in these words:—

"Let him file this before S.D.O., Supaul who is in-charge of L and O in Supaul section". "L & O" must mean law and order. This endorsement has been proved by witness No. 2 as being in the hand-writing of the then District Magistrate Sri V. V. Nathan with his initial (Ex. 8). Gurusaran Singh has also stated that the District Magistrate wrote this endorsement in his presence. There is another endorsement on the top of the complaint by Sri R. C. P. Verma, the then S.D.O., Supaul which has also been proved by witness No. 2. It contains the initial of the S.D.O. and the date 21st February, 1962, which corresponds with Gurusaran Singh's evidence that he handed it over to the S.D.O., Supaul on 21st February, 1962. The endorsement is in these words:—"There is sufficient police arrangement. I shall myself be going about on that day. File". "That day" must mean the date of polling in Tribeniganj and Chatapur thanas referred to in the complaint, viz., 23rd February, 1962. It was suggested in a petition filed by respondent No. 1 on 4th July, 1963 that there was an interpolation in the date of this endorsement. This is based on the fact that the numeral 1 of the date has been

written in thick lines. The suggestion is that the date originally given was 20th February 1962, which had been changed to 21st February, 1962 to agree with the Gurusaran Singh's evidence, but this endorsement had been proved on 4th April, 1963 and Gurusaran gave evidence on 8th April, 1963. It may not be an over-writing at all or it may be that S.D.O. himself had at first written the date as 20th February, 1962 by mistake and then corrected it. I cannot therefore attach any importance to this suggestion.

44. The complaint of Gurusaran Singh (Ex. 8b) is, as already stated, in Hindi and it is written on the printed letter forms of Zilla Congress Committee, Saharsa and consists of three pages, the endorsements being on the first page. The following is an English translation of it made by the same translator P.W. 50 [Ex. 8b(1)]:—

Dated:

"

Camp: Birpur.
20-2-1962.

To

The District Magistrate,
Saharsa, Camp: Birpur.

Sir,

For the last two days in connection with the election campaign of Congress candidate and canvassing I have been touring in Tribeniganj and Chattapur Thana. In this area I saw a leaflet being distributed on behalf of Socialist Candidate—Shri Bhupendra Narayan Mandal. Two copies of this leaflet are attached herewith. The title of this leaflet is:

"Saharsa Sansadiya Nirwachan Chhetra ke yadav Bandhuon se Appeal".

The signatories to this leaflet are Shri Mahtab Lal Yadav and five other persons. On reading it you will see that on behalf of Shri Bhupendra Narayan Mandal election propaganda is being made on caste line. This may affect law and order situation also. On 23rd Februray 1962 is the polling in Tribeniganj and Chattapur Thanas. Hence kindly pay attention to it.

I myself was going to Saharsa with this leaflet but I learnt at Balua that you are in Birpur and therefore I have come here and I am submitting this application.

Yours faithfully,

Sd/- GURUSARAN SINGH,
President,
District Congress Committee, Saharsa.
20-2-62."

45. It will be seen from the above that Gurusaran Singh drew the attention of the District Magistrate to these leaflets because he apprehended that on account of this propaganda on caste line there might be disturbance of the peace during the polling in Trilbeniganj and Chattapur Thanas on 23rd February 1962 and because of this apprehension the District Magistrate mentioned law and order in his endorsement and the S.D.O. referred to sufficient police arrangement in his endorsement. Comment has been made on the fact that the District Magistrate and the S.D.O. were not examined to prove the respective endorsements and an attempt was also made at the fag of the case to prove that the endorsements were not in their hand writings. The last witness (No. 67) examined by respondent No. 1 claimed that he was a pleader's clerk at Supaul and knew the hand-writings of Sri V. V. Nathan, District Magistrate, and R.C.P. Verma, S.D.O., Supaul, and that the endorsements were not in their hand-writings. No such suggestion was made to the witness who proved the endorsements or to Gurusaran Singh. This evidence does not deserve any consideration and is clearly an after-thought and the witness himself is not at all competent to prove the hand-writings of these officers with which he had had no occasion to be familiar, even if he is a pleader's clerk as he claims to be, though he did not produce his registration card. The evidence of the District Election clerk who prove the endorsements and who must be familiar with the hand-writings of these officers should be considered sufficient and believed, though the officers themselves have not been examined—the more so because the complaint itself has been produced from the custody of the District Election Office. It should be stated in fairness to the learned Advocate who argued the case for

respondent No. 1 that he did not refer to the evidence of his witness No. 67 but he argued that the second and third pages of the original complaint had been changed in the Election office and substituted by the present pages which refer to the leaflets. He suggested that since the endorsements referred to law and order and police arrangement the complaint must have been with regard to something also which was calculated to seriously endanger the law and order situation. There can reasonably be no basis for such a suggestion and it cannot be believed that the pages of the complaint had been substituted while the document was in the custody of the Election office. As I have already stated, law and order situation is mentioned in the complaint itself and propaganda on caste lines mentioned therein might quite reasonably have been expected to create ill-feeling and hatred between castes and inflame passions at the time of polling. I am satisfied that this complaint with the two enclosed leaflets had actually been filed by Gurusaran Singh and I accept his evidence on this point.

46. It has finally been argued that Gurusaran Singh did not mention who distributed the leaflets at Chatapur or from whom he got his copy and that in the annexures to the election petitions Chatapur has not been mentioned as one of the places where the leaflets were distributed. So far as Triveniganj is concerned, Gurusaran Singh has stated that Anup Lal Yadav distributed the leaflets there and Triveniganj and Anup Lal Yadav are mentioned in the annexures. We are not however, considering the question here of actual distribution of the leaflets at Chatapur or Tribeniganj. Gurusaran Singh did not seek to prove actual distribution and did not say that he received his copies of the leaflet from any distributors thereof. He was touring these thanas and came across these leaflets and obtained two copies from two persons whose names he did not know. The point for our consideration here is whether he can be believed when he stated that he had seen and obtained copies of these leaflets on 20th February, 1962. The fact remains that he enclosed two copies of this leaflet along with his complaint dated 20th February 1962 and this fact cannot be ignored. It proves conclusively the existence of these leaflets before the last two dates of polling, viz., 21st February 1962 and 23rd February 1962.

47. There is next the evidence of two respectable witnesses who live outside this Parliamentary Constituency which also prove the existence of these leaflets before the dates of polling. There are witnesses No. 14 Sudhir Kumar Mukherjee and No. 15 Lakshman Chowdhuri for the petitioners. The first is a medical practitioner and the second is an Honorary Magistrate at Supaul. They have stated that they visited the village of Simrahi Bazar within Saharsa Parliamentary Constituency on the invitation of friend Dr. P. K. Das on the occasion of the latter's 'grihaprabesh' ceremony, i.e., the ceremony which is performed at the first entrance to a newly built house. They were invited to a feast and they arrived in the evening and were shown such printed leaflets by a Mukhia of Simrahi Bazar whose name they did not remember. They could not give the exact date but they stated that they remembered that it was 8 or 10 days before the polling at Supaul Assembly Constituency and that this polling took place on the 25th February, 1962. So the date would be between 15th February 1962 and 17th February 1962. The first witness, though a Bengalee, knows and can read Hindi and they both read the leaflet and held a discussion about it with the other invitees. Though they had no recollection about other election leaflets or pamphlets, they remembered this one because it was interesting. They are not members of the Congress or voters in this Parliamentary Constituency and took no part in the election. The only suggestion against them is that they are members of the managing committee of Bharat Sevak Samaj College at Supaul but no connection between this college or its managing committee and the respondent No. 3 has been established. They appear to be perfectly independent and disinterested witnesses and their evidence is corroborated by the Mukhia of Simrahi Bazar, Girdhar Ram who is witness No. 40 for the petitioners. He has stated that 5 or 6 days before the polling at Simrahi Bazar which is within Pratapganj P.S. and the polling there took place on 21st February 1962—he got one of these leaflets which were being distributed in his village and that on the same evening he took it to the house of Dr. P. K. Das where he also was invited and showed it to the invitees. Witness No. 32 for respondent No. 1 said that Dr. P. K. Das's house had been built 5 or 6 years ago and that the 'grihaprabesh' ceremony had been held one year later. I cannot, however, place any reliance on this witness. He is obviously an interested witness having been in charge of the election office of the Socialist Party at Simrahi Bazar. I accept the evidence of Sudhir Kumar Mukherjee and Lakshman Chowdhuri and find that these leaflets were in existence on at least 17th February 1962.

48. If these printed leaflets had been in existence and had been filed before the authorities several days before the election, as the evidence discussed above establishes, it would be absurd to suggest that they had been printed at the instance of respondent No. 3 to be used for the purposes of an election petition. It has, however, been suggested that it was more likely that the respondent No. 3 got them printed because this press was under the control of his brother Kamal Narayan Misra who had an interest therein. No direct evidence on the point has been adduced but a copy of a judgment in a Civil Suit has been produced showing that in the year 1952 the Punjab National Bank Ltd., sued the Bihar Trading Corporation, Durbhanga through its proprietor Kamal Narayan Misra and also Kamal Narayan himself and another person named Bishwanath Chowdhuri as surely for recovery of a sum of Rs. 4,409/- and odd and that the said suit was decreed against all of them. (Ex. E-2). In execution of the decree the Mithila Art Press was attached as the property of Bishwanath Chowdhuri in 1957 and there after there was a suit by one Lachman Jha against the Punjab National Bank in which it was claimed that he was the proprietor of the Mithila Art Press having purchased it in 1947 from one Ramjoy Singh. This suit was decreed and Lachman Jha was found to be the proprietor of the Press. The petitioners have filed a copy of this judgment. (Ex. 25-f). This being the position it cannot be said that the Mithila Art Press was under the control of the respondent No. 3's brother Kamal Narayan Misra in 1962 or at any time. The petitioners have produced certified copies of the declaration filed under the Press and Registration of Books Act regarding this Press which show that Ramakant Misra has been the printer and publisher of the Press since 13th November 1956 and that one Sovanand Jha is the keeper of the Press since that date (Exs. 26 & 26a). Lachman Jha is a brother of Sovanand Jha.

49. Coming now to the evidence of Ramakant Misra the respondent No. 1's first comment is that his story that Exs. 6(b) & 6(c) were brought to him by Bhubaneswar Biswas and Tarakanta Jha should not be believed because these persons have not been examined and it is suggested that they are under the control of the respondent No. 3. So far as Bhubaneswar Biswas is concerned, it is quite clear that he is a member of the Socialist Party and is connected with the respondent No. 1. He was the latter's polling agent at this election at a polling booth at L.P. School, Bhimpore, as is proved by the appointment of polling agent form, Ex. 18. He was appointed by Urmilesh Jha who has admitted his signature in this form. He has, however, stated that he sent a blank form with his signature and that it was filled up later. There is, however, no denial that Bhubaneswar Biswas actually acted as polling agent for respondent No. 1 in this booth. The petitioners have also filed certified copies of the order sheet of a criminal case (Ex. 27) which show that a charge sheet under section 144/379 I.P.C. was filed against Bhubaneswar Biswas and others on 6th January 1962 and that subsequently on 20th February 1963 a warrant of arrest was issued against Bhubaneswar Biswas. He was arrested and then released on bail and the person who stood surety for him was Asheswar Goit, witness No. 53 for respondent No. 1, who was a candidate for election to Bihar Legislative Assembly in 1962 on behalf of the Socialist Party and who is alleged to have himself distributed leaflets like Ex. 6 in some place on behalf of respondent No. 1. He admitted that he had stood surety for Bhubaneswar Biswas. These facts show that Bhubaneswar Biswas is really under the control of respondent No. 1 and his supporters and had been so during the election. The petitioners cannot therefore obviously examine him as their witness. The respondent No. 1 could have done so but chose not to do so. There is absolutely nothing to show that he is under the control of the petitioners and that they have withheld him. A petition was filed at a very late stage of the case when the respondent No. 1 was in the witness box and stated that Bhubaneswar Biswas was present in Court that he should be examined as a Court witness. This petition was rejected. I do not think therefore that any adverse inference should be drawn against the petitioners for not having examined Bhubaneswar Biswas as a witness and that the evidence of Ramakant Misra should be rejected on that ground.

50. So far as Tarakant Jha is concerned the respondent No. 1's suggestion is that he is connected with the respondent No. 3 because he deposed as a witness for the latter's brother Kamal Narayan Misra in the suit of the Punjab National Bank already referred to. A certified copy of his deposition has been produced (Ex. E), but that was long ago, the date of his deposition being 16th November 1954. There is no evidence that he is still connected in any way with the respondent No. 3's brother. It has next been suggested that he is the publisher of a magazine called 'Bideh' the editor of which is a Congressman. That is, however, no evidence that he is connected with respondent No. 3. The petitioner's suggestion on the other hand is that Tarakant is a sympathiser of the

Socialist Party and that his magazine 'Videh' prints articles of the leaders of that Party. In any case, he does not appear to me to be a very material witness because he was not the bearer of the letter or the manuscript which were brought by Bhubaneswar Biswas and all that he did was to accompany and introduce the latter because he was known to Ramakant Misra. His residence was at Darbhanga and he was the publisher of a newspaper 'Darbhanga Samachar' which was printed at Mithila Art Press. The respondent No. 1 filed some copies of this newspaper which purport to have been printed at another press, viz., Nirman Press of Lahiriasarai, (Ex. H series), but the petitioners produced several other copies issued during 1960-63 which had been printed at Mithila Art Press (Ex. 24 series). The non-examination of Tarakant Jha by the petitioners should not, in these circumstances, lead to any adverse inference against them. I should further mention in this connection that the evidence of Ramakant Misra that the manuscript was brought to him by Bhubaneswar Biswas and Tarakant Jha is supported by their signatures occurring therein. The signature of Tarakant Jha has not been denied by any witness for respondent No. 1 and though the signature of Bhubaneswar Biswas has been denied by Asheswar Goit, it has been proved by two other witnesses for the petitioners, viz., witness No. 39 Subhash Chandra Misra and No. 42 Kedar Narayan Singh, both members of the Socialist Party who must be familiar with his signature and who, as I shall presently show, are quite reliable witnesses and should be believed. Kedar Narayan has also proved Bhubaneswar's signature on the form Ex. 18.

51. These two witnesses along with another Bhup Narain Kamat (witness No. 44) have also proved that the letter, Ex. 6(c), and the manuscript, Ex. 6(b), are in the handwriting of Urmilesh Jha. Ramakant's competence to prove this handwriting has been challenged because, according to his evidence, he had met Urmilesh Jha only five or six times and had received before this only one order from him—an order for printing his letter-heads in this press, which Urmilesh Jha has denied, but there can be no question about the competence of the first two witnesses at least to prove and identify Urmilesh Jha's handwriting. Subhash Chandra Misra has been a member of the Socialist Party since 1959. He was also the polling agent of respondent No. 1 at Chainpur booth and was so appointed by Urmilesh Jha. This is proved by the appointment of polling agent form, Ex. 18(a), and Urmilesh Jha has admitted his signature therein, though he has stated that he sent a blank form with his signature which was filled up later at the polling booth. The witness has, however, stated that he signed the form in the presence of Urmilesh Jha. Wherever the form might have been signed the fact remains that Subhash Misra was the polling agent of respondent No. 1 in this election. He has received many letters from Urmilesh Jha in connection with party affairs and is certainly familiar with his hand-writing and competent to prove it. Suggestions were made against him that he had been involved in some criminal cases but his evidence is that these were all in connection with political agitations carried on by him and there is no evidence to the contrary. He said, however, that he did not believe in caste propaganda and had differences with the respondent No. 1 on that account. But this is not sufficient to discredit his testimony.

52. This witness was asked in cross examination whether he could produce any letter of Urmilesh Jha received by him and he produced a letter written in Hindi and dated 10th February 1962 and showed it to the cross examining Advocate. After the cross examination had been concluded the petitioners prayed for recall of the witness and the letter was proved by him and brought on the record (Ex. 15). Urmilesh Jha has denied this letter but it had been sent through the post office and bears post marks which show that it had been posted at Saharsa from where it was written on 10th February 1962 and had been received at Balubazar post office to which it was addressed on 13th February 1962. It had thus been written and posted several days before the election and could not have been fabricated for the purpose of these election petitions, as was suggested. This letter has some bearing on the point at issue before us and as it has been relied upon by the petitioners in proof of their case, I append below an English translation of it (Ex. 15-1) made by the same translator, P.W. 50:—

"

Saharsa,

10-2-1962.

Dear Subhashji,

Reports regarding election have not been received from your place. It is not known that you all are doing for Bhupendra Babu. Lalit Babu is a formidable candidate. In order to get him defeated it is imperative that he is deprived of the Rajput and Brahmin votes. As the

situation has developed, he is not likely to get the Yadav votes. What is necessary now (is) to tackle the Rajput and Brahmin votes. You go to the villages abounding (in) Brahmins and Rajputs and work on this line. Ramanugrah Babu is already doing this work. If we all help a little, then Brahmin and Rajput votes will be divided. Lalit Babu will be surely defeated. You let us know the development at your place.

Yours URMILESH.

53. It will be seen that the letter asked for a report from the witness regarding his election work which shows that he had been working for the respondent No. 1 during the election. The letter next directed him to work among the Brahmin and Rajput voters for the defeat of respondent No. 3, the witness being himself a Brahmin. The witness has said that he had strong objection to work on caste lines and that he had sent a protest in writing to Sri Raj Narain Singh, President of the Socialist Party of India, about it. The respondent No. 1 examined Sri Raj Narain as a witness (No. 54) and he denied having received any such protest. He admitted, however, that all protests or complaints received in his office were not put up before him and that he did not personally deal with any complaint, unless it related to a member of the National Committee or the Parliamentary Board of the Party. His evidence does not therefore prove conclusively that Subhas Misra had lied about sending a protest, as has been argued. He did not say that his protest had been received and dealt with by the President. The protest, if sent by post, might have been mislaid in the course of transmission or ignored in the office. I cannot therefore hold that he is a lying witness and that his evidence regarding Exs. 6(b) and 6(c) should be disbelieved.

54. The next witness Kedar Narain Singh is also a member of the Socialist Party since 1955 and was for some time Joint Secretary of the District Socialist Party at Saharsa, as has been admitted by Urmilesh Jha. He was a candidate for election to Bihar Legislative Assembly from Sonbarsa Constituency in 1962 on behalf of this party. He received many letters from Urmilesh Jha and has produced some of them. They relate to organisational matters of the Party and excepting one were all written on post cards during 1957-58. (Ex. 16 series). Urmilesh Jha did not deny these letters. The witness said that he had differences with the respondent No. 1 on account of the latter's caste policy and his backing of the Yadavs in the name of backward classes. That should, however, be no ground for disbelieving the witness. He denied a suggestion that he was under the influence of respondent No. 3 through his second wife, a Brahmin lady, and there is no evidence to that effect. He is certainly competent to prove and identify the handwriting of Urmilesh Jha in Exs. 6(b) and 6(c) and I find no reason why his evidence should not be accepted.

55. I cannot however be so sure about the third witness Bhup Narain Kamat. He formerly belonged to the Congress but resigned in December, 1961. He then joined the Socialist Party and stood for election to Bihar Legislative Assembly from Madhpura Constituency but was defeated. He resigned from the party in March, 1962. It was suggested to him that he had been set up by the respondent No. 3 to contest the Congress candidate. This suggestion is certainly improbable but there is evidence of witness No. 45 for respondent No. 1—Upendra Narain Mandal—that he had actually helped the respondent No. 3 in the election. Whether that is true or not, I do not think that it would be safe to rely on this witness because he was in the Socialist Party for only 3 months from January to March, 1962 and so could not have had sufficient opportunity to be familiar with the handwriting of Urmilesh Jha. He produced no letters from the latter, though he said that he had received some. The witness was also sought to be discredited on the ground that he had been convicted of criminal misappropriation, but he was finally acquitted by the High Court (Ex. 25). No discredit attaches to this witness on this ground but I cannot accept his evidence on the other ground mentioned before.

56. It has, however, been contended that the writings in Exs. 6(b) and 6(c) are different from the admitted hand-writings of Urmilesh Jha and my attention has been specially drawn to the signatures. The signatures are no doubt different from the admitted signatures in the deposition and in Exs. 18 and 18(a), as also the signatures appearing in the letters, Ex. 16 series, which, as already stated, have not been denied. The signatures in Exs. 6(b) and 6(c) have got top lines as in ordinary Hindi writings, but the admitted signatures do not contain them. Urmilesh Jha has stated that, according to the direction of a conference held at Ujjain for reform of the Debnagari script and mode of writing, he has ceased to use top lines in his writings and signatures since 1961. There are, however, two

signatures of his on the account of election expenses submitted by him on behalf of the respondent No. 1 which have been proved by P.W. 42 Kedar Narain Singh and marked Ex. 17 and have not been denied by him. These signatures are different from each other. The first signature is like his admitted signatures but the second signature below it which has been put within brackets is different with the letters separate from each other. Though the second signature does not have any top line, the letters in it are exactly like those in the signatures in Exs. 6(b) and 6(c), and carefully and minutely comparing them I have no manner of doubt that the signatures in the latter documents are genuine signatures of Urmilesh Jha. Not only the letters but the loops, the strokes and the manner of writing are also the same. Ex. 17 makes it clear that Urmilesh Jha had two styles of signature—one of the conventional body-writing style and the other an individualised, distinctive signature. The signatures in Exs. 6(b) and 6(c) are of the conventional body writing style. It may be that he chose to subscribe this style of signature to these documents because it was more easily decipherable than the other style or because Ramakant Misra was familiar with this style of signature.

57. So far as the dropping of top lines is concerned, no proceedings of the conference at Ujjain and no direction of the Socialist Party to that effect have been produced. The letters, Exs. 16 series, all contain top lines. Two letters, Exs. C and C-1, of Urmilesh Jha have been produced by Asheswar Goit which do not contain top lines but these had been written recently after these cases. I therefore attach no importance to this plea. So far as the writings in Exs. 6(b) and 6(c) are concerned, I have also carefully examined and compared the manner and style of writing and the strokes, loop, and other characteristics in the letters of Ex. 16 series and noted similar characteristics in the writings of Exs. 6(b) and 6(c). The Hindi word 'priya' for 'dear' occurs in the beginning of all these letters and also in Ex. 6(c) and the word Saharsa in Hindi occurs in the addressees of these letters and also in Ex. 6(c). They are all written exactly in the same style and with the same peculiarities, strokes and loops. The same variations from the standard forms and similar peculiarities in the writing of many letters of the alphabet have been noticed in them. It was argued that without the help of an expert comparison was risky and reference was made to Ogborn's "Questioned Documents" on the point. I may state here that a prayer was made by the respondent No. 1 for the examination of the disputed writings by an expert at a very late stage in the trial on 22nd June 1963 and renewed on 5th July 1963. These prayers were rejected as having been made too late. Exs. 6(b) and 6(c) had been proved on 4th March 1963 and for nearly four months thereafter no step was taken for their examination by an expert. The evidence was concluded on 12th July 1963. But even without the help of an expert comparison of hand-writings can be made by the Court to come to its own conclusion regarding the genuineness of disputed writings under section 73 of the Indian Evidence Act and reference may be made in this connection to the recent decision of the Calcutta High Court in the case of Biseswar Poddar—Vs. Nabawip Chandra Poddar, reported in 64 C.W.N. 1067. After a review of the previous decisions P. B. Mukharji, J., observed in this case that where there is evidence, even though such evidence may not be the evidence of an expert, the Court certainly can and it is its duty to use its eyes to compare the disputed signature with the admitted signatures. I am fully satisfied on the evidence discussed above and on a comparison of the disputed writings and signatures with the admitted writings and signatures of Urmilesh Jha that Exs. 6(b) and 6(c) are genuine documents written by Urmilesh Jha.

58. It is impossible to accept the suggestion that both these documents are forged. I may state here that Urmilesh Jha in his examination-in-chief used the word 'forged' with reference to the signatures only. In cross examination, however, he challenged them as forgeries. A forger may take the risk of forging signatures, but it is certainly very unusual that he would undertake the risk of forging entire documents. There was also apparently no reason for taking such risk. These were not documents for creating personal liability. It was not essential on the respondent No. 3 assuming that he had created these documents for the purpose of these election petitions, to get the manuscript forged to make it appear that Urmilesh Jha had written it. An order for printing under a forged signature of Urmilesh Jha would have been sufficient for the purpose. Besides, since the printed leaflets had been in existence several days before the election it would be absurd to suggest that the respondent No. 3 was responsible for their printing for the purpose of an election petition. It could not have been known or anticipated then that he would lose the election. So no question of forging these documents at that stage could have arisen. All these circumstances make it clear that the documents could not have been forgeries.

59. It has next been argued that the letter, Ex. 6(c), bears internal evidence that it could not have been written by Urmilesh Jha because it mentions facts which were not necessary or material for the printing of the leaflets, e.g., it seeks to connect Bhupendra Babu with the printing of the leaflets by suggesting that he desired that they should be printed outside Saharsa and states regarding the six persons named therein that their consent had been obtained. I find nothing unusual or suspicious in these statements. In view of the restrictions imposed by section 127A of the Act, already referred to, the printers of such election pamphlets had to be satisfied as to on whose behalf or for whose benefit they were to be printed and since the manuscript did not contain the signatures of the six persons these details were necessary to persuade the printer to print them. I should mention here that none of these six persons deposed before me to deny such consent. Neither Urmilesh Jha nor the respondent No. 1 mentioned anything about five of them. But on the day before the evidence was concluded a son of respondent No. 1 (No. 64) gave evidence that these persons were Congressmen and had helped the respondent No. 3 in the election. No such suggestion excepting with regard to Mahtab Lal Yadav had been made to any witness for the petitioners. It is clearly an after thought and so I cannot attach any weight to this evidence. My attention has also been drawn to a Hindi word on the top right-hand corner of the letter which has been struck out and which appears to be the word for 'confidential'. Certainly Urmilesh Jha wanted the printing of these leaflets not to be disclosed prematurely in the Constituency and so sent the order to Darbhanga outside the constituency. Perhaps he also intended that the printer would treat the letter as confidential but later struck the word out remembering the requirements of the law under section 127A. Finally it was contended that the letter could not have been written on the date 6th February 1962 from Saharsa because Urmilesh Jha was not at Saharsa on that day but had been touring the different districts of the State with the Socialist Party leader Sri Madhu Limaye. The latter has been examined by the respondent No. 1 (No. 68) and has supported this stating that from the 5th to the 10th February he toured outside Saharsa district and that Urmilesh was all along with him. Even if Urmilesh was not at Saharsa on the 6th February, that would not make the letter suspicious. He might have written the letter from elsewhere and mentioned Saharsa because the letter had been written on the printed letter-head of the Saharsa Branch of the Party and that was his permanent address. He might have written it on the 5th and been wrong about the date. In any case, the date was not important as the letter was not delivered at the press until 9th February, 1962.

60. I now come to the evidence of distribution of these leaflets. So far as this question is concerned, it has been pointed out that several villages were mentioned in the annexures and the amendments thereof as the places where, and several persons were named therein as the persons by whom, these leaflets were distributed but that the evidence given by the petitioners has been confined to only a few of these places and persons. It has not, however, been suggested that any of the places where the distribution was made, according to the evidence, or any of the persons named as distributors was not mentioned in the annexures. We are not concerned with the particulars about which evidence has not been given and it is only necessary to consider whether the evidence which has been adduced can be accepted. Evidence has been given about distribution of these leaflets at Saharsa. Two witnesses—No. 4 Thakurprasad Tewari and No. 5 Janardan Chowdhuri—have proved such distribution at Saharsa just outside the Railway Station at about 11 a.m. 6 or 7 days before the polling at Saharsa which took place on 18th February 1962. Thakurprasad Tewari has also given the probable date as 12th February 1962. He is an Advocate practising at Saharsa and is also the President of the Bar Association there. He was going to Court when he noticed this leaflet being distributed by one Parmahand Jha, a Muktar, and Urmilesh Jha—both being related to each other. They were also speaking to the crowd there. He got a copy of the leaflet and read it. He mentioned the matter to respondent No. 3 after the election. He met there witness No. 5 Janardan Chowdhuri who is a medical practitioner at Saharsa. The latter also mentioned Urmilesh Jha as one of the distributors of the leaflet and said that he got one copy from Urmilesh Jha himself and read it. He saw Thakur Prasad Tewari there. There is absolutely no reason to reject the testimony of these two respectable and independent witnesses. The only suggestion against Thakur Prasad is that he had taken a loan from the Government and was seeking the help of respondent No. 3 for time to repay the loan. He denied it, though he admitted the loan and said that he had paid the greater part of it. Janardan Chowdhuri is the medical officer-in-charge of the hostel of Saharsa College of the Governing Body of which Rajendra Misra, cousin of respondent No. 3 is a member and the suggestion against him is that he is under the influence of Rajendra Misra. He has denied the suggestion. I can place no weight on these suggestions and I

consider them to be perfectly disinterested witnesses. It has been argued that they were not Yadavs—one being a Brahmin and the other a Jaiswal by caste—and that it was therefore unlikely that copies of the leaflet should have been given to them. But leaflets cannot be distributed amongst a crowd by identification of caste and so there was nothing unusual about these witnesses getting copies of the same.

61. At the same place these leaflets were again distributed at 4 p.m. probably on the same date and two witnesses—No. 7 Rajabali Thakur and No. 33 Mithilesh Prasad—have deposed about it. Their evidence is that 6 or 7 days before the polling they saw Urmilesh Jha distributing these leaflets on the east of Saharsa Railway Station while the respondent No. 1 was waiting in a jeep on the road. Rajabali Thakur is a retired Deputy Superintendent of Police and is also distantly related to Urmilesh Jha. He has a truck business and his son is a Government stockist of grains. The suggestion against him is that he and his son obtained licenses for their respective business through the efforts of respondent No. 3 which he denied. He is certainly a respectable witness and there is no reason to disbelieve his testimony. Mithilesh Prasad was for sometime the manager of a press of which Rajendra Misra's son was the proprietor and his brother is manager of a Khadi Bhandar under Saharsa District Congress Committee. That is not sufficient to discredit his testimony. There is nothing to show that he is at present interested in any way in respondent No. 3. Neither he nor Rajabali Thakur worked for anybody in the election. I find no reason whatsoever to disbelieve them. As to why the leaflets should have been distributed at the same place twice on the same date it has been explained by the learned Advocate for the petitioners that the vicinity of a Court or a railway station was the most likely place where a crowd of villagers would be available for such distribution at 11 a.m. when litigants would be coming to Court and at 4 p.m. when they would be going back to their villages. It is also likely that the distribution was repeated in the afternoon because the respondent No. 1 had then come to the place on his election propaganda. The respondent No. 1 and Urmilesh Jha and two more witnesses for the respondent No. 1 viz., No. 12 Jafasankar Chowdhuri and No. 27 Ramesh Jha of Saharsa, have denied such distribution. The last two belong to the Praja Socialist Party and it has been argued that they should be believed. They were, however, both supporting the respondent No. 1 in the election and were obviously interested in his success. Ramesh Jha was elected to Bihar Legislative Assembly from Saharsa Constituency in 1962 and he admitted that he and respondent No. 1 made joint election propaganda. I cannot therefore consider them to be disinterested witnesses. Their denial as well as the denial of Urmilesh Jha and respondent No. 1 cannot therefore affect the evidence of the witnesses discussed above and I find that distribution of the leaflets by Urmilesh Jha at Saharsa has been well proved and that on one occasion of such distribution the respondent No. 1 was himself present.

62. Witness No. 6 Shibendra Narayan Chowdhuri is a Bengalee having a drug shop at Pratapganj Bazar. He has proved distribution of such leaflets near his shop after a meeting addressed by respondent No. 1, the distributor being Asheswar Goit, 5 or 6 days before polling which took place in Pratapganj constituency, also known as Raghpur constituency, on 21st February 1962. Asheswar Goit, witness No. 55 for respondent No. 1, was a candidate for election to Bihar Legislative Assembly from Raghpur Constituency in 1962 on behalf of the Socialist Party and was a Yadav by caste. He has denied this distribution. He is certainly highly interested in respondent No. 1 and I cannot therefore accept his denial in preference to the evidence of Shibendra Narayan who appears to be a disinterested witness and is also respectably connected, his father having been Vice-Chairman of a Local Board. The only suggestion against him is that Rajendra Misra helped him in getting licence for his drug shop which he denied. He had nothing to do with the Congress and was also not a voter and took no part in the election. Witness No. 46 Sahadeo Mukhia for respondent No. 1 said that Shibendra Narayan did not reside at Pratapganj and that respondent No. 3 used to visit his shop. This was not, however, put to Shibendra Narayan in cross examination and is clearly an after-thought to which I can attach no importance. This witness as well as respondent No. 1 admitted that a meeting had been held at Pratapganj which, according to the witness, had been addressed by respondent No. 1 and Asheswar Goit, but they said that the meeting had been held three months before the filing of nomination papers or six months before election. It is impossible to believe that an election meeting would have been held so long before the election and it may be an attempt to shift the date of the meeting as far back as possible. There is another witness—No. 13 Upendra Narayan Singh—for the petitioners who has corroborated the evidence of Shibendra Narayan. He saw distribution

of leaflets in the meeting and got a copy from a boy. He did not say who distributed them but named Asheswar Goit as having been present at the meeting. He does not also name the respondent No. 1. I find that distribution of leaflets by Asheswar Goit at this place has been proved.

63. Witness No. 8 Nageswar Prasad Singh for the petitioner who is a retired Sub-Inspector of Police has spoken of distribution of the leaflets at Basantapur Hat (within Raghopper Constituency) where a meeting was held in which respondent No. 1 and Asheswar Goit were present on a Friday which was a Hat-day 4 or 5 days before the polling and said that Asheswar Goit distributed the leaflets. Witness No. 29 Haldhar Prasad Deo has corroborated him but he could not say who actually distributed the leaflets. He got his copy from a boy. They are independent witnesses and took no part in the election campaign of any party. The suggestion that they have deposed falsely at the instance of respondent No. 3 has been denied and no connection with the latter has been established. Haldhar Prasad's cousin is a Congress worker and he himself is a contractor in the Kosi Project but that is not sufficient to show that he is under the influence of respondent No. 3. Nageswar Prasad has sometimes contributed to congress funds but I cannot reject his testimony simply on this ground. Witness No. 41 Kari Poddar for respondent No. 1 said that the Hat at Basantapur had been discontinued for about four years and denied that any such meeting had been held there. He said further that he had a shop close by. The discontinuance of the Hat was never suggested to this witness and is clearly an after-thought. It was suggested to this witness that he was not a resident of, and did not know, the locality. He could not say on what days of the week the Hat used to assemble. He is, in my opinion, a thoroughly unreliable witness. Asheswar Goit has of course denied this distribution but, as I have already indicated, he is an interested witness. I find that this distribution has been proved.

64. Witness No. 10 Babuji Bariat for the petitioners gave evidence about distribution of these leaflets at Pachoriatola, a locality inhabited by Yadavs in the village of Karjain within Pratapganj P.S., 5 or 6 days before the polling there. The witness is a Yadav and he said that a meeting of the Yadavs was held there which was addressed by respondent No. 1 and that distribution of the leaflets was made by Asheswar Goit. He also produced one of the leaflets received (Ex. 6-j). He gave one leaflet to Mr. Kenet, an Englishman residing at Karjain, who was passing along the road and enquired about the meeting. He is witness No. 21 and has corroborated this. He did not actually see distribution but was told about it by Babuji Bariat. He knows Hindi and read the leaflet. The suggestion against him is that he was polling agent of respondent No. 3 which he denied. Another witness No. 11 Anirud Prasad Singh, a Post-master, had been the respondent No. 1 and Asheswar Goit at Karjain going towards Pachoriatola 5 or 6 days before the polling. Witness No. 12 Phudan Argaria another Yadav, has also deposed about this meeting and distribution of leaflets by Asheswar Goit. He is, however, illiterate and so could not read or identify the leaflet. There is, therefore, sufficient corroboration of the evidence of Babuji Bariat. No adequate reason has been suggested why these witnesses should have deposed falsely. They have deposed as to what they actually saw or noticed. The suggestion against the Post-Master is that he got his appointment through respondent No. 3 which he denied. The suggestion against the Yadav witnesses is that they have deposed at the instance of one Biswanath, a Mukhia and congress worker. The suggestions are absolutely worthless. This meeting was held on the courtyard of one Sreelal Shanogia and the respondent No. 1 has examined his Son Mohan (No. 40) who denied that such a meeting was ever held. Asheswar Goit has of course denied the meeting and distribution of the leaflets. I cannot, however, rely upon them in preference to these witnesses and I find that the meeting was held and that leaflets were distributed at the meeting.

65. Witness No. 36 Birendra Narayan Singh has deposed to distribution of these leaflets at Rampatti in P.S. Singheswar on 13th February 1962 by Mahtab Lal Mandal in the presence of respondent No. 1. He also mentioned that one Parameswar Mandal of Rampatti was present then and received a leaflet. The respondent No. 1 has examined witness No. 14 Parameswar Prasad Yadav of Rampatti who has denied this and stated that there was no other Parameswar Mandal at Rampatti excepting himself. There is no corroboration of the evidence of Birendra Narayan who is a member of the Congress and also of Bharat Sevak Samaj and was the representative of respondent No. 3 in the Block Development Committee of Singheswar. I cannot therefore accept him as a disinterested witness and find that this distribution has been proved. Witness No. 9 Iswari Prasad Singh has deposed about distribution of such leaflets by Mahtab Lal at Sourbazar 5 or 6 days before the polling. He was sitting then in the shop of Sukdeo Shah and sent a boy to bring one leaflet and later made it over to Dr. Gajendra Prasad

who was in-charge of the congress election campaign at Madhipura. The latter has not been examined. Witness No. 13 Bindheswari Bhagat for respondent No. 1, a Mukhiya and resident of Sourbazar, has denied that Mahtab Lal who ordinarily resided at Patna ever came to Sourbazar and distributed leaflets there. Certain suggestions were also made to Iswari Prasad about his animus against the respondent No. 1. Taking everything into account I cannot find on his uncorroborated testimony that this distribution has been proved.

66. The last witness of distribution of such leaflets is No. 40 Girdhar Ram, Mukhiya of Simrahi Bazar, to whom I have already referred. He named Mahtab Lal Yadav as the distributor and said that he carried one copy to the house of Dr. P. K. Das and showed it to witnesses No. 14 and 15 Sudhir Kumar Mookherjee and Lakshan Chowdhuri. Their evidence indirectly corroborates the witness but there is no corroboration of distribution by Mahtab Lal. The witness did not also know Mahtab Lal. He said that he saw him for the first time that day but did not say how he got his name. Mahtab Lal's name appears in the leaflet and comment has been made on the fact that he has not deposed to deny this distribution. The respondent No. 1's suggestion is that he was an old congressman and did not support him. But even if there is no denial by him, in view of what has been stated above I do not consider it safe to accept Girdhar Ram's statement that the leaflets were distributed by Mahtab Lal, though I find no reason to disbelieve his evidence that there was distribution of the leaflets at his village on the day in question. Besides the above evidence of distribution of these leaflets there is also a mass of evidence about caste propaganda amongst Yadavs and backward classes by respondent No. 1 and his agents and workers and there is correspondingly a mass of evidence on the other side denying it. This evidence is, however, general and vague without mention of the villages or places where such propaganda was made or of the workers who carried on such propaganda and there is also no reference therein to what the voters were exactly told by way of caste propaganda. I cannot, therefore, place any reliance on such vague evidence.

67. Hence my finding on this issue based upon the evidence of distribution of the offending leaflets which have accepted is that corrupt practices under sub-sections (3) and (3A) of section 123 were committed by the respondent No. 1, his election agent Urmilesh Jha and another agent Asheswar Goit at the places mentioned above. The respondent No. 1 was himself present at the distribution at Saharsa, at Pratapganj Bazar, at Basantpur and at Pachoriatolla in Karjain village and so his consent to the distribution may well be presumed. According to Urmilesh Jha, nothing was done by him without the knowledge of respondent No. 1 and the latter accepted full responsibility for propaganda made on his behalf by his agents. There can therefore be no question that he was guilty of these corrupt practices.

68. Before I leave this issue I should observe that the statement in the leaflet that Shivnandan Prasad Mandal had been denied Congress nomination for the Bihar Legislative Assembly is not a correct statement. The evidence of respondent No. 1 himself is that he had refused Congress nomination which suggests that such nomination had been offered to him. Witness No. 45 Upendra Narayan Mandal said the same thing and further said that Shivnandan Mandal supported the Congress in this election. It was therefore a false statement intended to prejudice the Yadav voters against the Congress candidate.

Issue No. 7:

69. So far as this issue is concerned the petitioners' case is that the respondent No. 2 issued in his own name a printed appeal to Brahmin and Rajput voters of Saharsa district on the ground of religion so as to prejudice the election prospects of respondent No. 3 and improve the election prospects of respondent No. 1. The appeal is in Hindi (Ex. 10) and the following is an English translation of it made by witness No. 50 for the petitioners:

"To

The Brahmin and Rajput brethren of Saharsa

District,

Bicycle.

Bicycle

Brothers,

During the forthcoming third General Election I am also a candidate for the Parliamentary Constituency of Saharsa. Sanatana Dharma is, to-day, breathing its last, and I am in anxious agony to protect it. You are aware that living

according to the code of Sanatana Dharma has always been the cherished ideal of my life. Finding the Sanatana Dharma in danger, I lost no time in kicking off my Government job. Having left my job, I have dedicated myself to the protection of religion.

Shri Lalit Narayan Mishra is the Congress candidate from the Saharsa Parliamentary Constituency. You all know how great an enemy of Sanatana Dharma he has been. Because of him and thanks of Shri Rajendra Mishra, this religion has lost its vitality and if their efforts continue in this direction, it is going to exterminate. Not only these two individuals, but their Congress Government as well are the staunch enemy of this religion. You can observe how under the patronage of Congress Government, Harijans and other backward communities are progressing at our cost. And if this process continues the villages of Brahmins would degenerate into the abode of Sudras and scoundrels.

You can observe to-day that the Swatantra Party, with the slogan to establish the victory of religion upon the throne of Delhi, has made its onward march. To make this march a success would be the greatest step towards the protection of Sanatana Dharma. If you support this contingent and it achieves success, you may rest assured that religion would be saved; otherwise, it is already drawing its last breath and it will succumb to death in no time.

Therefore, I appeal to the brothers of Brahmin and Rajput communities of this district that they should vote for the Swatantra party by putting mark on Cycle. This alone would strengthen the campaign of Swatantra party and enable me to carry your burning religious enthusiasm to Delhi.

Humbly yours,
Ramanugraha Jha.

Mithila Press, Darbhanga—257 (5-2-62)—3,000."

70. It is clear from the above that it was an appeal for protection of Hindu religion or Sanatan Dharma said to have been endangered by the respondent No. 3 and Sri Rajendra Mishra. The respondent No. 3 was depicted as a great enemy of Sanatan Dharma and it was stated that because of him and Rajendra Mishra this religion was going to be exterminated. The Congress Government also came in for castigation for its share in this process of extermination and the Brahmins were warned that if this process continued the villages of Brahmins would degenerate into abodes of Sudras and scoundrels. So in order to stop this process and protect their religion the Brahmin and the Rajput voters were called upon to support the Swatantra Party represented by the respondent No. 2 the slogan of which was the establishment of this religion "on the throne of Delhi". It was therefore clearly an appeal on the ground of religion to vote for the respondent No. 2 and to refrain from voting for respondent No. 3 and, as such, it constituted a corrupt practice under sub-section (3) of Section 123.

71. The respondent No. 2 has denied that he issued this appeal or got it printed and distributed it in the constituency. The leaflet purports to have been printed at Mithila Press, Darbhanga. He has examined one Bhupendra Jha (No. 1) who claims to be the proprietor of this Press and has denied that the leaflet was printed in his Press. The petitioners' witness No. 41 Suraj Narayan Das has stated that he is a compositor in this Press and that he had composed this leaflet which was printed at the Press. He admitted that Bhupendra Jha was the proprietor of the Press. It is difficult to accept the evidence of this witness as against the evidence of the proprietor and the proprietor has also denied that there is any compositor of this name in his Press. It is true that the proprietor did not produce the job register and other books of the Press some of which had been called for from his brother Surendra Jha who is a joint proprietor of the Press, but the onus is on the petitioners to prove that the respondent No. 2 got these leaflets printed at the Mithila Press and I cannot find on the evidence that this has been proved in the face of the denial of the proprietor of the Press.

72. There is, however sufficient and reliable evidence that printed leaflets like Ex. 10 whoever might have got them printed and wherever they might have been printed—were distributed by the respondent No. 2 himself in certain places within the constituency. Witnesses No. 19 Nageswar Prasad Singh, No. 37 Indrakanta Jha, No. 23 Lakshmi Prasad Singh, No. 25 Bisheswar Thakur, No. 26 Anirudh Singh and No. 27 Dharamdeo Singh who are either Brahmin or Rajput voters in this constituency have proved such distribution. Dharamdeo Singh, a Rajput, was himself a candidate for election to Bihar Legislative Assembly from Trilbeniganj Constituency on behalf of the Swatantra Party and he said that he

toured throughout the constituency with respondent No. 2 who distributed such leaflets. He denied the suggestion that he had been set up by the respondent No. 3 to divide the votes of the Socialist Party a suggestion which seems to be worthless. He is still in the Swatantra Party. He considered the leaflet objectionable as his party did not believe in such appeals. Laksmi Prasad Singh (No. 23), another Rajput and a respectable member of the community, according to Arjun Misra, election agent of respondent No. 2 was a member of the District Board and an Hon'ble Magistrate. He said that the respondent No. 2 approached him for help in the election and showed him leaflets like Ex. 10. He refused to support him. A printed pamphlet containing certain allegations against him was shown to him and he said that they were false allegations and that the S.D.O. found them false on enquiry. He cannot therefore be discredited by this pamphlet. No. 19 Nageswar Prasad Singh, a Rajput voter and a Mukhiya, said that he had canvassed for respondent No. 2 in the election and got from him leaflets like Ex. 10 for distribution among Rajput and Brahmin voters and produced a copy in Court. His brother is a congressman, but he is not and cannot be said to be under the influence of the Congress. His evidence has been corroborated by Indrakant Jha, a Brahmin (No. 37), who has further proved that the respondent No. 2 himself distributed such leaflets in his village. This witness was for some time Manager of Khadi Grain Udyog Commission but that is no reason to reject his testimony. No. 25 Bisweswar Thakur, a Brahmin, deposed that there was a meeting of Rajput and Brahmin voters at his house at Matlipur, he being the Mukhiya there, and that the respondent No. 2 distributed such leaflets there and gave him some copies. He denied the suggestion that he was a polling agent of respondent No. 3 and there is no evidence to that effect. No. 26 Anirudh Singh, a Rajput, said that he got a leaflet from respondent No. 2 but he cannot be considered a disinterested witness because he was admittedly a canvasser for respondent No. 3. Omitting him, however, there seem to be no adequate grounds for disbelieving the other witnesses and I find it proved that the respondent No. 2 himself distributed and caused to be distributed such leaflets at the places mentioned by the witnesses before polling. It is very significant to note in this connection that his election agent Arjun Misra (No. 4) did not stick to his denial of distribution of such leaflets but stated in cross examination that he could not say whether such leaflets had been distributed on behalf of respondent No. 2.

73. There is, however, no proof that the respondent No. 2 issued such leaflets in the interests of respondent No. 1 or in collusion with him. He has no doubt said that the respondent No. 1 was more popular and that his election was a right choice by the people, but he has denied that he stood for election for helping the respondent No. 1. Whatever he did must be deemed to have been done for his own success or for the success of his party. Reference has been made in this connection to Ex. 15 (paragraph 52), but there is no suggestion therein that the respondent No. 2 was working in the interest of respondent No. 1. All that it suggested was that the respondent No. 2's propaganda amongst Rajput and Brahmin voters would divide the votes of respondent No. 3. The next question is whether the result of the election had been materially affected by the corrupt practice committed by respondent No. 2. He obtained 18,218 votes in the election and the difference in votes between respondents No. 1 and 3 was 15,133 (Ex. 7-Final Result Sheet). It has been argued that if the respondent No. 2 had not committed this corrupt practice, the Rajput and Brahmin voters who had voted for him would have voted for respondent No. 3. Some witnesses have no doubt said that such voters did not support the respondent No. 3, as they did in the 1957 election, on account of respondent No. 2's propaganda, but I cannot be satisfied that this attitude of such voters, even if true, should be attributed wholly to respondent No. 2's propaganda and the appeal contained in Ex. 10. The evidence does not show that this appeal was widely distributed. The respondent No. 2 represented an important political party. He was also an influential person. He must have obtained many votes by his influence or by the influence of his party. I can find no reasonable basis for the contention that all or even the majority of his votes should be presumed to have been obtained by corrupt practice. There is no evidence that he received only Rajput and Brahmin votes. He is equally likely to have obtained the votes of other communities also. The petitioner's own witness Nageswar Prasad Singh (No. 19) has given other reasons for the unwillingness of Brahmin and Rajput voters to support respondent No. 3 in this election. He has said that such voters including himself turned against the respondent No. 3 because he had not supported the present Chief Minister of Bihar in the contest for leadership after the death of the late Chief Minister. Several witnesses for the respondent No. 1 have referred to the respondent No. 3's unpopularity on various grounds. The respondent No. 1 claimed that the respondent No. 2 had really divided his votes and not the votes of respondent No. 3. The respondent No. 2's votes might as well have been cast in favour of respondent No. 1. On all these considerations I am not satisfied that

the result of the election had been materially affected by the corrupt practice committed by respondent No. 2.

Issue No. 8:

74. Section 100(1)(b) of the Act provides that subject to the provisions of sub-section (2), if the Tribunal is of opinion that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, the Tribunal shall declare the election of the returned candidate to be void. I have already found in issue No. 6 (paragraph 67) that corrupt practices under sub-sections (3) and (3A) of Section 123 were committed by the distribution of leaflets like Ex. 6 by Urmilesh Jha the election agent of respondent No. 1, and also by Asheswar Goit in the presence, and therefore with the consent, of the respondent No. 1. It is therefore clear that the election of the respondent No. 1 is liable to be declared void under this section and I hold that it should be so declared.

75. Section 100(1)(d) next provides that if the Tribunal is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected.....(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or.....(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the Tribunal shall declare the election of the returned candidate to be void. It has been contended that the election should also be declared void, in view of the corrupt practice committed by the respondent No. 2, under either of these sub-clauses. I have already found that the respondent No. 2 did not commit the corrupt practice in the interest of respondent No. 1 and he was not also an agent of the latter within the meaning of the Explanation to section 123. Therefore sub-clause (ii) will not apply. Sub-clause (iv) also will not be applicable because it was not a case of non-compliance with any provisions of the Act or of the rules. It was contended that the commission of a corrupt practice was non-compliance with Section 123, but this section contains only the definition of the corrupt practices and nothing more. The effect of the commission of the corrupt practices enumerated in this section on the validity of an election has been mentioned in Section 100. An election cannot be declared void under sub-section (1) of Section 100 on account of the commission of any corrupt practice, unless such commission comes within the purview of clause (b) or clause (d) (ii) of the sub-section. I have also found that the commission of the corrupt practice by the respondent No. 2 has not materially affected the result of the election. I hold accordingly that the election of respondent No. 1 cannot be declared void on this ground.

Issue No. 9:

76. There is also a prayer in both the election petitions that the respondent No. 3 should be declared to have been duly elected. This prayer has been made under Sec. 101 of the Act. This section provides that if any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Tribunal is of opinion—

- (a) that in fact the petitioner or such other candidate received a majority of the valid votes; or
- (b) that but for the votes obtained by the returned candidate by corrupt practice the petitioner or such other candidate would have obtained a majority of the valid votes the Tribunal shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate as the case may be, to have been duly elected. There is an allegation in the election petitions that the Returning Officer had, in the course of counting of the votes, rejected a large number of valid votes obtained by the respondent No. 3 and that the number of votes so rejected exceeded the margin of votes by which the respondent No. 3 lost the election. This meant that the respondent No. 3 should be declared duly elected under clause (a) of the section, but this case was not pressed at the hearing because it was found from the report of the Returning Officer (Ex. 7) that the total number of votes rejected was only 9591 which was much less than the number of votes by which the respondent No. 3 had been defeated. It has, however, been contended that the case comes under clause (b) because but for the votes obtained by the respondent No. 1 by the corrupt practices committed by him the respondent No. 3 would have obtained

a majority of the valid votes. Reliance has been placed in this behalf on the decisions of the Supreme Court in the case of Basappa Vs Nagappa, reported in A.I.R. 1954 C.S. 440, Jamuna Prasad Vs Lachi Ram, reported in A.I.R. 1954 S.C. 636 and Nagappa Vs Basappa, reported in A.I.R. 1955 S.C. 756.

77. In the case of Basappa Vs Nagappa the Tribunal had found that a bus was procured by the returned candidate which carried to the polling booths about 60 voters and that thereby the returned candidate committed a corrupt practice. The returned candidate had been elected by a majority of 34 votes only and in the circumstances the Tribunal came to the conclusion that the petitioner would have obtained a majority of the valid votes but for the votes obtained by the returned candidate by the aforesaid corrupt practice. The petitioner was accordingly declared duly elected. There was an application to the High Court of Mysore for issue of a writ of certiorari against this order and the High Court issued a writ. The matter then went up to the Supreme Court and that Court set aside the judgment of the High Court. In pronouncing the judgment of the Supreme Court B. K. Mukherjee, J., observed that in the circumstances of the case it could be legitimately presumed that the majority of the voters carried by the procured bus did vote for the returned candidate and that if the votes of at least 40 or 50 of these persons were left out of account as being procured by corrupt practice, the returned candidate's majority by 34 votes would be completely wiped out and the petitioner would gain an undisputed majority. Subsequently the case again came before the Supreme Court by way of special appeal against the order of the Tribunal and that decision of the Supreme Court is reported in A.I.R. 1955 S.C. 756. The court held that the matter was concluded by the observations in the first case which have been already quoted.

78. In the case of Jamuna Prasad Vs Lachi Ram the constituency was a double member constituency and four candidates had contested the election from the General Constituency. The difference in votes between the returned candidate and respondent No. 6, the candidate who was declared elected by the Tribunal was 919. The Tribunal held that corrupt practices by systematic appeal on the basis of caste and circulation of false and scandalous statements regarding respondent No. 6 had been committed by the returned candidate and that but for the votes obtained by him by such corrupt practice the respondent No. 6 would have obtained a majority of the valid votes. The Supreme Court observed that this was pure speculation and was not a conclusion which any reasonable mind could judicially reach on the data established in the case because there was nothing to show why the majority of the returned candidate's voters would have preferred the respondent No. 6 and ignored the other two candidates who had contested the election. This decision was also considered by the Supreme Court in the subsequent case of Nagappa Vs Basappa (A.I.R. 1955 S.C. 756) and it was held that the above observations had no application to the facts of Nagappa's case because even if all the votes obtained by the returned candidate by corrupt practice were recorded in favour of any defeated candidate other than the candidate who was declared elected, the lead of the latter would have remained unaffected.

79. The question was also considered by the Allahabad High Court in the case of Ashfaq Ali Khan Vs. Darshan Singh, reported in 20 E.L.R. 136. This case there were several candidates contesting the election and the difference in the number of votes between the appellant who was the returned candidate and the respondent was 277. The Tribunal found that corrupt practice by systematic appeal to vote on the ground of religion had been committed by the returned candidate and that but for the votes so obtained by corrupt practice the respondent would have obtained a majority of the valid votes. The High Court observed that in applying the provisions of section 101(b) it has to be shown that the returned candidate had obtained some votes by corrupt practice and the votes so obtained are to be deducted from the number of votes actually obtained by him and then it has to be seen whether the votes obtained by the other candidate exceeded the votes of the returned candidate after such deduction. If, however, the case is that some of the votes of the other candidate had been deflected and cast in favour of the returned candidate, then they might be added to the votes which the other candidate had actually received. On the facts the High Court held that there was no evidence worth the name to show how many votes the returned candidate had obtained by corrupt practice or that any votes lost by the respondent in consequence of the corrupt practice had been cast in favour of the returned candidate and rejected the conclusion of the Tribunal as pure speculation.

80. In the instant case the voting was as follows (Ex. 7):—

Respondent No. 1	... 97,038 votes.
Respondent No. 2	... 18,218 votes.
Respondent No. 3	.. 81,905 votes.

so the difference in votes between the respondents No. 1 and 3 was 15,133 and, on the principles laid down in the above decisions, in order to succeed under section 101(b) the petitioners will have to furnish reliable data from which the Tribunal can reasonably come to the conclusion that the respondent No. 1 had obtained by the corrupt practices committed by him this huge margin of votes and something more which should be deducted from his total number of votes. Though there was a third candidate, it would not however be necessary to show that these voters would have preferred respondent No. 3 to the third candidate, since the latter obtained only 18,218 votes. The petitioners have sought to prove their case in the following manner:—

They have examined six witnesses (Nos. 28, 30, 38, 43, 45 and 46) who are members and whole-time workers of the Congress and they have given evidence that after the institution of these cases, under instructions of the District Congress Committee, Saharsa, they held a census of the Yadav voters in the six Assembly Constituencies within this Parliamentary Constituency. The results of their census operations have been filed in the form of statements giving the numbers of Yadav and non-Yadav voters villagewise in each Constituency. In the electoral roll of each Constituency the names of the Yadav voters have been marked by them by the letters 'ya' and the said electoral rolls have been filed (Exs 12 to 14a and 19 to 21a). Their conclusion is that the total number of Yadav voters in these constituencies was 1,16,922 out of 4,23,927, i.e., about 28 per cent. The learned Advocate for the petitioners next compared the names of the voters marked by them with the marked copies of the electoral rolls produced by the Returning Officer and he arrived at the figure of 54,279 as the number of Yadav voters who had actually cast their votes in the election. It has been argued that it would be a reasonable presumption to make that one half of these voters had cast their votes in favour of the respondent no. 1 and that they did so under the influence of his caste appeal. It has also been suggested that if even one-third of these voters had so voted, the margin of 15,133 votes would be wiped out.

81. It appears, however, that the census operations on which this argument is based were not conducted on proper lines. It is clear from the evidence of the six witnesses that they did not approach individual voters to ascertain their caste and though they said that they had visited each village and made enquiries, there is no corroborative evidence on the point. No Yadav voter has come forward to corroborate that he has asked about his caste or that his village was visited and any enquiry was made. It is not unlikely, as has been suggested, that what they did in the main was to take up the electoral rolls and mark therein the names of the voters whom they considered to be Yadavs from their titles like Yadav, Mandal etc. There is, however, evidence that many other castes bear the title of Mandal and witness no. 30 admitted that castes like Koiris, Kewats and Dhanukas called themselves Mandal, though witness no. 28 denied it. In view of such contradictory statements it is difficult to believe that any proper census or enquiry was made. It has been argued that the conclusion of these witnesses that the Yadav voters constituted 28% of the total number of voters accords with the statement in Ex. 6 that the Yadavs constituted about 30% of the population of Saharsa District. But that must be a guess and in such matters one should not proceed on mere guess. My attention has been drawn in this connection to a publication of the Bihar Government, Public Relations Department, called "Bihar 1959-60-Facts and Figures" in which it is stated (at pages 26-27) that the backward classes comprised 285,664 persons out of a total population of 13,08,198 in Saharsa District (i.e., about 21.8 p.c.) and, according to Appendix VII thereto, the backward classes included 110 categories of which the Ahirs (Yadavs etc.) constituted one category (no. 78). It is all the more difficult, therefore, to accept the percentage given by these witnesses as even approximately correct. If this figure be not correct, then the figure of Yadav voters who actually voted, based thereon, cannot also be taken as correct.

82. Then again where is the guarantee or reasonable certainty that one-half of the so estimated 54, 279 Yadav voters who voted had cast their votes in favour of

respondent no. 1 and that they or at least 15,134 of them had so voted under the influence of the latter's caste appeal. No reliable data are available from which it can be ascertained with any reasonable prospect of certainty how many Yadav voters were approached with caste appeal and how many fell under its influence. The number of leaflets printed was only 5000. The evidence that was given about distribution did not show that the distribution exceeded a few hundreds at the most. As already stated, the general evidence regarding caste propaganda is too vague to be relied upon and equally vague is the general statement of some witnesses that the Yadavs who had supported the respondent no. 3 in the 1957 election did not support him this time on account of caste propaganda. Reference was made in this connection to Jai Kumar Singh, witness no. 2 for respondent no. 1, who had contested the respondent no. 3 in the election of 1957 and been defeated, inspite of his being a Yadav, and to his evidence that the Yadavs had supported the respondent No. 3 in that election. But he also stated that the Yadavs had similarly supported the respondent no. 3 in the 1962 election. The Parliamentary Constituency in 1957 was, however, different being a double-member constituency and Jai Kumar Singh had contested the election as an independent candidate and not on behalf of the Socialist Party (there was another candidate for the Praja Socialist Party), as is found, from the "Report on the Second General Elections in India 1957, Vol. II, published by Election Commission India (pages 120-21). The elections of 1957 and 1962 are not, therefore, comparable and from the mere fact that a Yadav candidate had been defeated by the respondent no. 3 in 1957, while another Yadav candidate defeated him in 1962, it cannot be presumed that he had less support of the Yadav voters in 1962 and that it was the result of the caste appeal of respondent no. 1.

83. Finally my attention has been drawn to the figures of voting in the Madhipura Assembly Constituency and it has been argued that these figures fully demonstrate the effect of the caste appeal. The figures are as follows:—

For the Legislative Assembly:—

Vindheswari Prasad Mandal (Congress)	... 24,451 votes.
Bhup Narain Kamat (Socialist Party)	... 9,507 votes.

For the Lok Sabha:—

Respondent no. 1	... 21,518 votes.
Respondent no. 3	... 11,443 votes.

The total number of Yadav voters in this constituency, according to the petitioners' estimate, was 29,031 constituting 39 p.c. of the total number of voters and the number of such voters who had actually voted was 14,707. Vindheswari Prasad Mandal was a Yadav by caste while Bhup Narain Kamat was a Kewat. It has been argued that the above figures show that the voting in this constituency had been not on party lines but on caste lines and that the fact that Vindheswari Prasad Mandal obtained 14,944 more votes than Bhup Narain Kewat was due to the caste appeal of respondent No. 1 of which he reaped the benefit as a Yadav inspite of hi; being a Congress candidate. It may be that he as a Yadav commanded more votes of his community, but where is the evidence that it was due to the caste appeal of respondent no. 1. So far as evidence goes, only one instance of distribution of th offending leaflet within this constituency was given by witness no. 9 and that evidence has not been accepted by me. Madhipura was the home constituency of respondent No. 1. He and Vindheswari Prasad Mandal had contested the Assembly Election in this constituency in 1952 and 1957 and Vindheswari Prasad Mandal had won in 1952 and he in 1957. Both of them had nursed this constituency for ten years and, according to the evidence, Vindheswari Mandal had much influence in the constituency. Thus there were also other reasons why they obtained nearly equal number of votes. Reference was also made to the voting figures in other Assembly Constituencies and it was contended that these figures showed that the difference in votes between respondents no. 1 & 3 increased or decreased in proportion to the increase or decrease in the percentage of Yadav

voters. The following table has been submitted in this connection by the petitioners:-

Constituency	Number & percentage of Yadav voters	No. of Yadav voters who cast their votes.	Votes obtained by respondent no. 1	Votes obtained by respondent no. 3
Madhipura	29,031 39 p.c.	14,707	21,518	11,445
Singheswar	14,864 30 p.c.	7,592	11,240	7,190
Saharsa	23,705 27 p.c.	10,111	23,958	16,834
Kishanpur	25,130 25 p.c.	10,970	19,664	21,520
Triveniganj	12,033 23 p.c.	5,820	9,114	10,441
Raghopur	12,159 20 p.c.	5,079	11,542	14,472.

84. I have set out the above table but I am unable to draw from it the conclusion desired by the petitioners not only because the voting figures in the last three constituencies do not support it but also because, as already stated, the figures of Yadav voters and of those who actually voted have not been proved to be accurate or even approximately accurate. There is also no evidence that the difference in votes between the respondents nos. 1 and 3, wherever it was in favour of the former, represented Yadav votes and that such voters had voted for him under the influence of his caste appeal. This cannot be assumed from the mere increase or decrease in the number of votes in proportion to the increase or decrease in the number of Yadav voters, which number is itself an assumption. Such assumption would amount to pure speculation and speculation should be avoided according to the decisions quoted above. I have already referred to the evidence regarding the decline of respondent no. 3's popularity among certain sections of the voters for various reasons and there is also evidence that the respondent No. 1 was more popular among the poor and backward classes. Evidence has also been given about the unpopularity of the Congress in this locality. There might have been various reasons why the respondent No. 1 commanded more votes than respondent No. 3 in this election. All that can be said is that his caste appeal certainly constituted one of these reasons. It is, however, impossible to find on the materials before me that this was the sole reason and that the enormous difference in votes between him and the respondent No. 3 should be ascribed to that reason alone. Proof of even one instance of a corrupt practice committed by a returned candidate is sufficient for declaring his election void under section 100 (1)(b) of the Act, but a declaration under section 101(b) requires much more materials and convincing proof as to the effect of such corrupt practice-specially when the difference in votes to be wiped out is a huge figure as in this case. I find that no case has been made out for a declaration that the respondent No. 3 has been duly elected and that the prayer to that effect must fail.

85. I order accordingly that these election petitions be allowed in part. The election of the respondent no. 1 Shri Bhupendra Narain Mandal be declared void under section 100(1)(b) of the Act, but the prayer that the respondent No. 3 Shri Lalit Narain Mishra be declared to have been duly elected under section 101(b) of the Act be rejected. Under section 99(1)(a) (II) of the Act the respondent No. 1 Shri Bhupendra Narain Mandal and the respondent no. 2 Shri Ram Anugrah Jha are named as the persons found guilty by me of corrupt practices under subsection (3) of section 123 of the Act (paragraphs 67 and 72 ante). As regards costs I allow the set of costs in the two petitioners estimated at Rs 1000/- to be recovered by the two petitioners in equal proportion from the respondent No. 1 alone. As the petitioners did not press some of the issues and their prayer under section 101(b)

of the Act has been rejected they are not entitled to more costs. No costs are awarded against the respondent no. 2.

Typed to my dictation

Sd. P. K. SARKAR,

and corrected by me.

Sd. P. K. Sarkar.

Member,

Election Tribunal,

Patna.

9th September 1963.

[No. 82/177-296/82.]

By order,

V. RAGHAVAN, Under Secy.

MINISTRY OF HOME AFFAIRS

New Delhi, the 1st October, 1963

S.O. 2864.—In pursuance of clause (1) of article 239 of the Constitution, the President hereby directs that the Lt., Governor of Himachal Pradesh, the Chief Commissioners of Delhi, Manipur, Tripura, and Andaman and Nicobar Islands and, the Administrator of the Laccadive, Minicoy and Amindivi Islands shall, subject to the control of the President and until further orders, exercise the powers, and discharge the functions, of the State Government conferred by or under the Income-tax Act, 1961, (43 of 1961), within their respective Union territories.

[No. F.2/11/63-Judl. II.]

K. R. PRABHU, Dy. Secy

New Delhi, the 3rd October, 1963

S.O. 2865.—In exercise of the powers conferred by Section 3 of the Foreigners Act, 1948, (31 of 1948), the Central Government hereby makes the following further amendments in the Foreigners Order, 1948, namely:—

1. This order may be called the Foreigners (Amendment) Order, 1963.

2. In the Foreigners Order, 1948, for paragraph 10, the following paragraph shall be substituted, namely:—

“10. *Restrictions on Employment.*—(1) No foreigner shall, without the permission in writing of the civil authority, either enter any premises relating to, or be employed in, or in connection with:

- (i) any undertaking for the supply to Government or to the public of light, petroleum, power or water; or
- (ii) any other undertaking which may be specified by the Central Government in this behalf.

(2) The management of any undertaking referred to in sub-paragraph (1) shall furnish to the civil authority such information regarding foreigners employed in that undertaking and make available for inspection such records and registers as may be called for by that authority.”

[No. 1/53/63-F. III.]

FATEH SINGH, Jt. Secy.

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 5th October 1963

THE PONDICHERRY JUDICIAL OFFICES (QUALIFICATIONS) RULES, 1963

S.O. 2866.—In exercise of the powers conferred by the proviso to article 369 of the Constitution, the President hereby makes the following rules, namely:—

1. (1) These rules may be called the Pondicherry Judicial Officers (Qualifications) Rules, 1963.

(2) They shall be deemed to have come into force on the 16th August, 1962.

2. A person shall be eligible for appointment as a Judge of Tribunal Superieur d' Appel Tribunal de Premiere Instance, Tribunal du Travail, Tribunal Conseil du Contentieux or any other Court functioning in the Union territory of Pondicherry if he holds either a degree in French law (Licencie en Droit) or a degree in Law of an Indian University:

Provided that any person holding a degree in French law shall be sufficiently conversant with the English language:

Provided further that in the case of persons holding a degree in law of an Indian University, knowledge of the French language will be a preferential qualification.

[No. GII(Pond)119(22)/63.]

C. S. AHLUWALIA, Under Secy.

New Delhi, the 5th October 1963

S.O. 2867.—In pursuance of clause (a) of section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri Narainder Garg, Assistant in the Embassy of India, Tansanariye, to perform the duties of a Consular Agent, with effect from the 28th October, 1963.

[No. F. T/4330/3/63.]

S. K. CHATTERJEE, Under Secy.

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 5th October 1963

S.O. 2868.—Statement of the Affairs of the Reserve Bank of India, as on the 27th September 1963.

BANKING DEPARTMENT

LIABILITIES	Rs.	Assets	Rs.
Capital paid up	5,00,00,000	Notes	32,57,78,000
Reserve Fund	30,00,00,000	Rupee Coin	2,06,000
National Agricultural Credit (Long Term Operations) Fund	73,00,00,000	Small Coin	2,62,000
National Agricultural Credit (Stabilisation) Fund	8,00,00,000	National Agricultural Credit (Long Term Operations) Fund (a) Loans and Advances to :— (i) State Governments	27,12,42,000
Deposits :—		(ii) State Co-operative Banks	10,06,88,000
(a) Government (i) Central Government	64,29,61,000	(iii) Central Land Mortgage Banks . . . . .	..
(ii) State Governments	6,08,19,000	(b) Investment in Central Land Mortgage Bank Debentures	3,55,31,000
(b) Banks (i) Scheduled Banks	85,65,09,000	National Agricultural Credit (Stabilisation) Fund Loans and Advances to State Co-operative Banks . . . . .	..
(ii) State Co-operative Banks	2,23,66,000	Bills purchased and Discounted :— (a) Internal . . . . .	..
(iii) Other Banks	4,63,000	(b) External . . . . .	..
(c) Others	159,43,06,000	(c) Government Treasury Bills	77,59,61,000
Bills Payable	36,07,14,000	Balances held Abroad*	7,62,30,000
Other Liabilities	25,09,33,000	Loans and Advances to Governments**	33,45,72,000
		Loans and Advances to :— (i) Scheduled Banks†	1,87,90,000
		(ii) State Co-operative Banks†	128,85,21,000
		(iii) Others	1,64,55,000
		Investments	195,71,49,000
		Other Assets	24,76,86,000
Rupees	544,90,71,000	Rupees	544,90,71,000

*Includes Cash and Short-term Securities.

**Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary overdrafts to State Governments.

† Includes Rs. 10,00,000 advanced to scheduled banks against usance bills under Section 17(4) (c) of the Reserve Bank of India Act.

†† Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 1st day of October, 1963;

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 27th day of September, 1963.

ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
Notes held in the Banking Department . . .	32,57,78,000		Gold Coin and Bullion :—		
Notes in circulation . . .	2192,30,95,000		(a) Held in India . . .	117,76,10,000	
Total Notes issued . . .		2224,88,73,000	(b) Held outside India . . .	..
			Foreign Securities . . .	89,45,69,000	
			TOTAL . . .		207,21,79,000
			Rupee Coin . . .		125,36,12,000
			Government of India Rupee Securities . . .		1892,30,82,000
			Internal Bills of Exchange and other commercial paper . . .		..
TOTAL LIABILITIES . . .		2224,88,73,000	TOTAL ASSETS . . .		2224,88,73,000

Dated the 1st day of October, 1963.

M. V. RANGACHARI,
Deputy Governor.

[No. F. 3(2)-BC/63]

A. BAKSI, Jt. Secy.

(Department of Revenue)

INCOME-TAX

New Delhi, the 5th October 1963

S.O. 2869.—In exercise of the powers conferred by sub-section (6) of Section 88 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the Sri Nachiar (Sri Andal) and other temples under the Sri Nachiar Devasthanam, Srivilliputhur, Madras State to be of historic, archaeological and artistic importance for the purposes of the said section.

[No. 64 (F. No. 69/77/63-IT).]

D. SUBRAMANIAN, Dy. Secy.

(Department of Revenue)

ORDER

STAMPS

New Delhi, the 12th October, 1963

S.O. 2870.—In exercise of the powers conferred by clause (a) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the debentures of the value of rupees sixty lakhs to be issued by the Punjab Financial Corporation are chargeable under the said Act.

[No. 24. F. No. 1/66/63-Cus. VII/Stamps.]

M. G. VAIDYA, Under Secy.

(Department of Revenue)

CORRIGENDUM

ESTATE DUTY

New Delhi, the 30th September, 1963

S.O. 2871.—In the Ministry of Finance (Department of Revenue) Notification No. 20/F. No. 5/62/62-ED, dated the 31st August, 1963, published as S.O. 2611 on pages 3321—3330 of the Gazette of India, dated the 14th September, 1963, in Part II, Section 3, Sub-section (ii), the following corrections and additions shall be made in the Appendix to the aforesaid Notification, namely:—

(i) Under the head "I. Engineers/Surveyors/Architects":—

- (a) against Sl. No. "26", for—"c/o. Kapadia & Baria, Ballard House, Jamshed Office, 14, Mangalore Street, Fort, Bombay.", read—"c/o. Kapadia & Baria, Ballard House, Jame Jamshed Office, 14, Mangalore Street, Fort, Bombay.";
- (b) against Sl. No. "66", for—"Vithal Prasad, 290, Agarkar Road, Thalatwadi, Belgaum" read—"Vithal Prasad, 290, Agarkar Road Thalakwadi, Belgaum.;"
- (c) against Sl. No. "108", for—"Shri Narsimhan, Y.M.", read—"Shri Narsimhan, V. M.";
- (d) against Sl. No. "109", for—"Shri Viswanath, C.", read—"Shri Viswanath, V.C.";
- (e) below Sl. No. "127" and the corresponding entries, add following namely:—

S. No.	Name	Address
" 128.	Shri Bhar, H. M., B.E., C.E., M.I.E., M.I.S. (Val)	10, Hastings Street, Calcutta-I.

(ii) Under the head "II. Accountants":—

- (a) against Sl. No. "64", for—"National Insurance Building, Da-bhoy Naroji Road, Fort, Bombay.", read—"National Insurance Building, Dadabhoy Naroji Road, Fort, Bombay.";
- (b) against Sl. No. "66", for—"Shri Kumana Bhikaji Edulji, N. Com., F.G.D.A., F.C.A., F.S.A.A.", read—"Shri Kumana Bhikaji Edulji, B. Com., G.D.A., F.C.A., F.S.A.A.";

(c) against Sl. No. "127", for—"Shri Vishvanathan, E.D., B.A., G.D.A., F.C.A.", read—"Shri Vishvanathan, E.D., B.A., G.D.A., F.C.A."

[No. 26/F. No. 5/62/62-ED.]

P. K. GHOSH, Under Secy.

CENTRAL EXCISE COLLECTORATE, ALLAHABAD

1st. Amendment to Notification No. 6/CE/63 date 6-5-1963.

Allahabad, the 4th September 1963

S.O. 2872.—In the Table annexed to this Collectorate Notification No. 6/CE/63, dated 6th May, 1963, issued in exercise of the powers under rule 5 and published in Part II, Section 3, sub-section (1) of the Gazette of India, the following amendment shall be made:—

(1) Rule 59 and 183 occurring in column 3 of the aforesaid serial number 1 indicating powers of Assistant Collector, shall be deleted.

(2) Rule 59 occurring in column 3 of the aforesaid Table against Sl. No. 2 indicating powers of Superintendent shall be deleted.

[No. 12/CE/63.]

S. P. KAMPANI, Collector.

MINISTRY OF INDUSTRY

ORDER

New Delhi, the 30th September, 1963

S.O. 2873/IDRA/6/9.—In exercise of the powers conferred by section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), read with rule 5(1) of the Development Councils (Procedural) Rules, 1952, the Central Government hereby appoints, till the 18th July, 1965, Shri S. K. Choudhury to be a member of the Development Council established by the Order of the Government of India in the late Ministry of Commerce and Industry No. S.O. 2077, dated the 19th July, 1963, for the scheduled industries engaged in the manufacture or production of internal combustion engines, power driven pumps, air compressors and blowers and directs that the following amendment shall be made in the said Order, namely:—

In the said Order, after entry No. 26 relating to Commodore C. Bhushan, I.N., the following entry shall be inserted, namely:—

27. Shri S. K. Choudhury, Deputy Director of Refrigeration, Ministry of Food and Agriculture (Dept. of Food), Krishi Bhavan, New Delhi.

[No. 1(8)/L. Pr./63.]

S. P. KRISHNAMURTHY, Under Secy.

(Department of Company Law Administration)

New Delhi, the 30th September, 1963

S.O. 2874.—In pursuance of clause (a) of sub-section (2) of Section 9 of the Cost and Works Accountants Act, 1959 (23 of 1959), the Central Government hereby makes the following further amendment in the notification of the Government of India in the late Ministry of Commerce and Industry (Department of Company Law Administration) No. GSR 612, dated the 25th May, 1959, namely:—

In the said notification, for item 2 the following item shall be substituted, namely:—

"2. Southern India Regional Constituency: Comprising the States of Andhra Pradesh, Kerala, Madras and Mysore and the Union territory of Pondicherry."

[No. 10/18/63-I.G.C.]

CHARTERED ACCOUNTANTS

New Delhi, the 30th September 1963

S.O. 2875.—In pursuance of clause (a) of sub-section (2) of Section 9 of the Chartered Accountants Act, 1949, (38 of 1949), the Central Government hereby makes the following further amendment in the notification of the Government of India in the late Ministry of Commerce and Industry (Department of Company Law Administration) No. 3(64)-Inst./58, dated the 12th March, 1958, namely:—

In the said notification for item 2 the following item shall be substituted, namely:—

"2. The States of Andhra Pradesh, Kerala, Madras and Mysore and the Union territory of Pondicherry."

[No. 7/27/63-I.G.C.]
T. S. MENON, Under Secy.

(Indian Standards Institution)

New Delhi, the 27th September 1963.

S.O. 2876. Inexercise of the powers conferred by sub-regulations(2) and (3) of regulation 3 of the Indian Standards Institution (Certification Marks) Regulations, 1955, as amended in 1961 & 1962, the Indian Standards Institution hereby notifies the issue of errata slips particulars of which are given in column (4) of the Schedule hereto annexed, in respect of the Indian Standards specified in column (2) of the said Schedule.

THE SCHEDULE

Sl. No.	No. and Title of Indian Standard	No. and date of Gazette Notification in which es- tablishment of Indian Standard was notified	Particulars of Errata Slip Issued
(1)	(2)	(3)	(4)
1	IS:2016-1962 Specification for Plain Washers.	S.O. 1856 dated 16 June 1962.	(i) Pages 5 and 6, Table I; Pages 7 and 8, Table II; Pages 8 and 9, Table III; second column headings please read 'Diameter of Hole $d(Hr3)$ ' for 'Diameter of Hole $d(hr3)$ '. (ii) Page 8, Table III, first entry under column heading, 'Diameter of Hole $d(hr3)$ '. Please read '1.8' for '1.6'.
2	IS:2132-1963 Code of Practice for Thin-Walled Tube Sampling of Soils.	S.O. 1683 dated 22 June, 1963.	(i) Page 3, clause 0.3 please read 'IS:2131-1963 Method for Standard Penetration Test for Soils' for 'IS:2131-1963 Method for Penetration Standard Test for Soils'. (ii) Page 3, clause 0.4, third line from bottom please read 'Subsurface exploration' for 'sur- face exploration' (iii) Page 4, clause 2.1, line 3 please read 'effect' for of feet'
3	IS:2283-1962 Specification for Nickel Silver Sheet and Strip for General Purposes.	S.O. 1421 dated 25 May 1963.	(i) Page 7, heading of Table V— Please read 'TABLE V TO- LERANCES ON WID- TH OF SHEET AND STRIP (ROTARY SHE- ARED)'.

1

2

3

4

for 'TABLE V TOLERANCES ON WIDTH OF SHEET, STRIP AND FOIL (ROTARY SHEARED)'

(ii) Page 7, Table V, third column heading—
please read 'Over 0.15 mm Up to and Including 0.224 mm Thick',
for 'Over 0.100 mm Up to and Including 0.224 mm Thick'

4 IS:2358-1963 Specification for Formulations Based on Stabilized Methoxy Ethyl Mercury Chloride Concentrate.

S.O. 2160 dated 3 August, 1963.

(f) Page 10, Table II, col. 5—
Please read '(X-0.6R)' for '(X-0.6-R)'.

Copies of these Errata Slips are available, free of cost, with the Indian Standards Institution, Manak Bhavan, 9 Mathura Road, New Delhi-1 and also at its Branch Offices at (i) 232 Dr. Dadabhai Naoroji Road, Bombay-1, (ii) Third Floor, 11 Sooterkin Street, Calcutta-13 (III) Second Floor, Sathyamurthi Bhavan, 34, General Patters Road, Madras 2, and (iv) 14/69 Civil Lines, Kanpur.

[No. MD/13:6.]

S.O. 2877. In pursuance of sub-regulations (2) and (3) of regulation 3 of the Indian Standard Institution (Certification Marks) Regulations, 1955, as amended in 1961 & 1962, the Indian Standards Institution hereby notifies that the Indian Standard(s), particulars of which are given in the Schedule hereto annexed, have been established during the period 2 Sep. 1963 to 26 Sep. 1963.

THE SCHEDULE

Sl. No.	No. and Title of the Indian Standard established	No. and Title of the Indian Standard or Stan- dards, if any superseded by the new Indian Stan- dard.	Brief Particulars.	
				1 2 3 4
1	IS:375—1963 Marking and Arrangement for Switchgear Bus-Bars, Main Connections and Auxiliary Wiring (Revised).	IS:375—1951 Specification for Marking and Arrangement for Switchgear Bus-Bars, Main Connections and Auxiliary Wiring.	This standard covers marking and arrangement of bus-bars, main connections and auxiliary wiring, including functional marking of auxiliary wiring. (Price Rs. 3.00).	
2	IS:388—1963 Specification for Hydroquinone, Photographic Grade (Revised)	IS:388—1958 Specification for Hydroquinone, Photographic Grade.	This standard prescribes the requirements and the methods of test for hydroquine, photographic grade. (Price Rs.2.00).	
3	IS:660—1963 Safety Code for Mechanical Refrigeration (Revised).	IS:660—1955 Safety Code for Mechanical Refrigeration.	This code covers safety features in the design, construction, installation, operation and inspection of mechanical refrigeration systems of vapour compression type, including working conditions in the plant room which are considered reasonably necessary to safeguard life, health and property. (Price Rs. 3.00).	

1	2	3	4
4 IS:1444-1963 Specification for Engineers' Pattern Drawing Boards (<i>Revised</i>).	IS:1444-1959 Specification for Engineers' Pattern Drawing Boards.		This standard covers the requirements for four sizes of engineers' pattern drawing boards designated as D ₀ , D ₁ , D ₂ , and D ₃ . (Price Rs. 1.50).
5 IS:1469-1963 Specification for Ferro Molybdenum (<i>Revised</i>).	IS:1469-1960 Specification for Ferro Molybdenum.		This standard covers the requirements for four grades of ferro molybdenum, commonly used in the iron and steel industry. (Price Rs. 1.00).
6 IS:1708 (Part II)-1963 Methods of Testing Small Clear Specimens of Timber, Part III.	..		This standard covers methods of testing small clear specimens of timber for :— (a) tension perpendicular to grain, (b) tension parallel to grain, (c) nail and screw pulling tests, (d) brittleness test (Izod and Charpy tests), and (e) torsion test. These tests provide the basic data for comparison of the strength properties of different species of timber. (Price Rs. 3.50).
7 IS:2402-1963 Code of Practice for External Rendered Finishes.	..		This standard covers the application of external rendered finishes for all normal types of backgrounds. It also specifies the materials to be used for renderings and the minimum preparation of background for application of finish. (Price Rs. 6.50).
8 IS:2408-1963 Methods of Static Tests of Timbers in Structural Sizes.	..		This standard covers methods of testing and collection of data on timber sections of structural sizes, and it does not include sampling of specimens or methods of analysis for making use of the data for different purposes. (Price Rs. 4.00).
9 IS:2217-1963 Recommendations for Providing First-Aid Fire Fighting Arrangements in Public Buildings.	..		This standard lays down requirements regarding first-aid fire fighting arrangements including the scale of equipment to be provided in public buildings. (Price Rs. 2.00).
10 IS:2336-1963 Specification for Stainless Steel Milk Vats.	..		This standard prescribes the important constructional details and dimensional requirements for stainless steel milk vats of capacities of 500, 1,000, 1,500, and 2,000 litres, designed to collect or store milk prior to its processing or despatch. (Price Rs. 2.00).

1	2	3	4																																																		
11	IS:2337-1963 Specification for Aluminium Milk Vats.	..	This standard prescribes the important constructional details and dimensional requirements for aluminium milk vats of 300, 500 and 1,000 litres capacity, designed to collect or store milk prior to its processing or despatch. (Price Rs. 2.00).																																																		
12	IS:2411-1963 Methods of Chemical Analysis of Fluorspar (Fluorite).	..	This standard prescribes the methods for determination of calcium fluoride, calcium carbonate, silica, mixed oxides, barium, lead, zinc and sulphur in fluorspar of metallurgical and acid grades within the following ranges :																																																		
			<table> <thead> <tr> <th>Metal-</th> <th>Acid</th> </tr> <tr> <th>Lurgical Grade</th> <th>Grade</th> </tr> <tr> <th>Per-</th> <th>Per-</th> </tr> <tr> <th>cent</th> <th>cent</th> </tr> </thead> <tbody> <tr> <td>Calcium fluoride</td> <td>Above</td> <td>Above</td> </tr> <tr> <td>"</td> <td>85</td> <td>97</td> </tr> <tr> <td>Calcium as calcium carbonate</td> <td>6 to 10</td> <td>1 to 2</td> </tr> <tr> <td>Silica</td> <td>Up to</td> <td>Up to</td> </tr> <tr> <td>"</td> <td>5</td> <td>1</td> </tr> <tr> <td>Mixed oxides (Fe₂O₃, Al₂O₃, etc.)</td> <td>1 to 2</td> <td>0.1 to 0.5</td> </tr> <tr> <td>Barium as sulphate</td> <td>Up to</td> <td>..</td> </tr> <tr> <td>"</td> <td>0.2</td> <td></td> </tr> <tr> <td>Lead as sulphide</td> <td>Up to</td> <td>..</td> </tr> <tr> <td>"</td> <td>0.5</td> <td></td> </tr> <tr> <td>Zinc as sulphide</td> <td>Up to</td> <td>..</td> </tr> <tr> <td>"</td> <td>0.5</td> <td></td> </tr> <tr> <td>Sulphur</td> <td>Up to ..</td> <td>..</td> </tr> <tr> <td>"</td> <td>0.3</td> <td></td> </tr> </tbody> </table>	Metal-	Acid	Lurgical Grade	Grade	Per-	Per-	cent	cent	Calcium fluoride	Above	Above	"	85	97	Calcium as calcium carbonate	6 to 10	1 to 2	Silica	Up to	Up to	"	5	1	Mixed oxides (Fe ₂ O ₃ , Al ₂ O ₃ , etc.)	1 to 2	0.1 to 0.5	Barium as sulphate	Up to	..	"	0.2		Lead as sulphide	Up to	..	"	0.5		Zinc as sulphide	Up to	..	"	0.5		Sulphur	Up to	"	0.3	
Metal-	Acid																																																				
Lurgical Grade	Grade																																																				
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cent	cent																																																				
Calcium fluoride	Above	Above																																																			
"	85	97																																																			
Calcium as calcium carbonate	6 to 10	1 to 2																																																			
Silica	Up to	Up to																																																			
"	5	1																																																			
Mixed oxides (Fe ₂ O ₃ , Al ₂ O ₃ , etc.)	1 to 2	0.1 to 0.5																																																			
Barium as sulphate	Up to	..																																																			
"	0.2																																																				
Lead as sulphide	Up to	..																																																			
"	0.5																																																				
Zinc as sulphide	Up to	..																																																			
"	0.5																																																				
Sulphur	Up to																																																			
"	0.3																																																				
			(Price Rs. 4.00).																																																		
13	IS:2413-1963 Specification for Cotton Twine.	..	This standard prescribes the requirements for cotton twine No. 720 and No. 560. (Price Rs. 2.50).																																																		
14	IS:2416-1963 Specification for Boiler and Superheater Tubes for Marine and Naval Purposes.	..	<p>This standard covers the requirements of the following types of boiler and superheater tubes for marine and naval purposes :</p> <ul style="list-style-type: none"> (a) Cold drawn seamless carbon steel tubes (30 kgf/mm² minimum tensile strength), (b) Hot finished seamless carbon steel tubes (32 kgf/mm² minimum tensile strength), and (c) Electrically welded carbon steel tubes (32 kgf/mm² minimum tensile strength.) <p>(Price Rs. 3.50).</p>																																																		
15	IS:2417-1963 Glossary of terms Relating to Ultrasonic Testing.	..	This standard covers the terms relating to ultrasonic testing. (Price Rs. 5.00).																																																		

1	2	3	4
16	IS:2420-1963 Specification for Mackerel (<i>Rastrelliger SP</i>) Canned in Oil.	..	This standard prescribes the requirements and the methods of test for mackerel canned in oil. (Price Rs. 1.50).
17	IS:2421-1963 Specification for Sardines (<i>Sardinella SP</i>) Canned in Oil..	..	This standard prescribes the requirements and the methods of test for sardines canned in oil. (Price Rs. 1.50).
18	IS:2423-1963 Specification for Nylon Georgette.	..	This specification prescribes constructional details and other particulars of finished and unfinished nylon georgette produced with 2 different loom-settings. (Price Rs. 2.00).
19	IS:2424-1963 Specification for Nylon Taffeta.	..	This specification prescribes constructional details and other particulars of finished and unfinished nylon taffeta produced with 4 different loom-settings. (Price Rs. 2.00).
20	IS:2427-1963 Grading of Continuous Filament Viscose Rayon Yarn and Acetate Yarn, Bright and Dull.	..	This standard prescribes a method of grading continuous filament viscose rayon yarn and acetate yarn, bright and dull, wound on packages. This standard is applicable only to single yarns of viscose and acetate rayon. (Price Rs. 5.00).
21	IS:2433-1963 Specification for Seaworthy Packaging of Jute Products.	..	This specification prescribes the requirements of packaging jute products namely, hessian, sacking, jute bags and jute yarn, intended for overseas markets. (Price Rs. 1.50).
22	IS:2434-1963 Specification for Hand-Operated Drum Asphalt Mixer.	..	This standard lays down requirements regarding materials, capacity and construction of hand-operated drum asphalt mixer. (Price Re. 1.00).
23	IS:2435-1963 Specification for Indian Hessian.	..	This standard prescribes constructional details and other particulars of two varieties of hessian of weight 305 g/m ² (or 10 oz/40 in.) and 230 g/m ² (or 7 1/2 oz/40 in.). (Price Rs. 2.00).
24	IS:2436-1963 Specification for Heavy Cee Jute Bags.	..	This standard prescribes the constructional details and other particulars of heavy cee jute bags of dimension 102×71 cm (or 40X28 in.) (Price Rs. 2.50).
25	IS:2437-1963 Specification for Jute Corn Sacks.	..	This standard prescribes the constructional details and other particulars of jute corn sacks (or jute corn bags) of dimensions 104×58 cm (or 41×23 in.). (Price Rs. 2.50).

I	2	3	4
26	IS:2438-1963 Specification for Roller Pan Mixer.	..	This standard lays down requirements for materials, sizes, construction and power unit for roller pan mixers. (Price Rs. 1.50).
27	IS:2439-1963 Specification for Metal Hand Rollers (Fixed-Weight Type).	..	This standard lays down the requirements for material, construction and finish of fixed-weight type metal hand rollers for general purposes (Price Re. 1.00).
28	IS:2448 (Part I)-1963 Specification for Adhesive Insulating Tapes for Electrical Purposes. Part ITapes with Cotton Textile Substrates.	..	This standard specifies the requirements and the tests for adhesive insulating tapes using cotton textile substrates commonly used for insulation purposes in the electrical industry on low and medium voltage circuits. (Price Rs. 2.00).
29	IS:2449-1963 Specification for Silver Oxide.	..	This standard lays down requirements and methods of sampling and test for silver oxide. The material is used in the production of silvered mica plates in the manufacture of capacitors for electronics industry. (Price Rs. 2.00).
30	IS:2451-1963 Specification for Nickel Silver Ingots and Castings for Cutlery and Hollow-Ware.	..	This standard covers the requirements for three grades of nickel silver ingots and castings for cutlery and hollow-ware, designated as CuNi 20Zn22, CuNi15Zn22 and CuNi10Zn27. (Price Rs. 1.50).
31	IS:2456-1963 Specification for Brass Strip for Pen Nibs.	..	This standard cover the requirements for brass strips required for the manufacture of pen nibs. (Price Rs. 2.00).
32	IS:2457-1963 Specification for cotton Umbrella Cloth (Waterproofed).	..	This standard prescribes constructional details and other particulars of eight varieties of cotton umbrella cloth (waterproofed). Price Rs. 2.00).
33	IS:2466-1963 Specification for Beam Compasses.	..	This standard covers the requirements for slow-motion, adjustment type beam compasses of sizes 250, 500, 1,000 and 1,500 mm. (Price Rs. 1.50).

Copies of these Standards are available, for sale, with the Indian Standards Institution, Manak Bhavan, 9 Mathura Road, New Delhi-1, and also at its branch offices at (i) 232 Dr. Dadabhai Naoroji Road, Fort, Bombay-1, (ii) Third Floor, 11 Sooterkin Street, Calcutta-13 (iii) Second Floor, Sathyamurthi Bhavan, 54, General Patters Road, Madras-2, (iv) 14/69 Civ. Lines, Kanpur.

[No. MD/13:2.]

S.K. SEN,

Head of the Certification Marks Department.

MINISTRY OF INTERNATIONAL TRADE

New Delhi, the 5th October 1963

S.O. 2878.—The Central Government, having considered in consultation with the Forward Markets Commission, the application for recognition made under section 5 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952) by The Ahmedabad Seeds Merchants' Association Limited, Ahmedabad and being satisfied that it would be in the interest of the trade and also in the public interest, hereby grants, in exercise of the powers conferred by section 6 of the said Act, recognition to the said Association for a period of 3 years ending the 11th October, 1966 in respect of forward contracts in groundnut oil.

[No. 34(5)-Com(Genl)(FMC)/63.]

M. L. GUPTA, Under Secy.

ORDER

New Delhi, the 26th September, 1963

S.O. 2879.—In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following Order further to amend the Jute (Licensing and Control) Order, 1961, namely:—

1. This order may be called the Jute (Licensing and Control) Second Amendment Order, 1963.
2. In Clause 9A of the Jute (Licensing and Control) Order, 1961, for sub-clause (1) the following sub-clause shall be substituted, namely:—
 - (i) The Jute Commissioner may, by order, specify the minimum quantity of raw jute or any specified variety of jute, which a manufacturer shall—
 - (i) actually purchase either from any specified person or agency or otherwise, during any specified period;
 - (ii) have in his own possession during any specified period,

for the purpose of manufacture of jute textiles.

[No. F. 4(10)-J&C/62.]

A. G. V. SUBRAHMANIAM Under Secy.

(Office of the Jt. Chief Controller of Imports & Exports)

Calcutta, the 12th August 1963

S.O. 2880.—It is hereby notified, that in exercise of the powers conferred by Clause 9 of the Imports (Control) Order, 1955, the Government of India, in the Ministry of International Trade propose to cancel licence No. A652375/61, dated 5th June, 1962, valued at Rs. 250 for the import of Ball Bearings above 3" in bore [Sr. No. 19(I)(VII)-II] from the General Area except South and South West Africa, granted by the Jt. Chief Controller of Imports & Exports, Calcutta to M/s. Pyar Mechanical and Engineering Works, Dera Baba Nanak Road, Batala, unless sufficient cause against this is furnished to the Joint Chief Controller of Imports and Exports, Calcutta within ten days of the date of issue of this notice, by the said M/s. Pyar Mechanical and Engineering Works, Dera Baba Nanak Road, Batala, or any Bank, or any other party, who may be interested in it. It is noticed that the licence in question was obtained by misrepresentation of facts.

In view of what is stated above M/s. Pyar Mechanical and Engineering Works, Dera Baba Nanak Road, Batala, or any Bank, or any other party, who may be interested in the said licence No. A652375/61, dated 5th June, 1962, are hereby directed not to enter into any commitments against the said licence and return it immediately to the Joint Chief Controller of Imports & Exports, Calcutta.

[No. 79/63/CDN.]

S.O. 2881.—It is hereby notified, that in exercise of the powers conferred by Clause 9 of the Imports (Control) Order, 1955, the Government of India, in the Ministry of International Trade propose to cancel licence No. A652376/61, dated

5th June, 1962, valued at Rs. 250 for the Import of Ball Bearings of 1" in bore [Serial No. 19(I)(i)-III] from the General Area except South and South West Africa, granted by the Joint Chief Controller of Imports and Exports, Calcutta to M/s. Pyar Mechanical and Engineering Works, Dera Baba Nanak Road, Batala, unless sufficient cause against this is furnished to the Joint Chief Controller of Imports and Exports, Calcutta within ten days of the date of issue of this notice, by the said M/s. Pyar Mechanical and Engineering Works, Dera Baba Nanak Road, Batala, or any Bank or any other party, who may be interested in it. It is noticed that the licence in question was obtained by misrepresentation of facts.

In view of what is stated above M/s. Pyar Mechanical & Engineering Works, Dera Baba Nanak Road, Batala, or any Bank, or any other party who may be interested in the said licence No. A652376/61, dated 5th June, 1962, are hereby directed not to enter into any commitments against the said licence and return it immediately to the Joint Chief Controller of Imports and Exports, Calcutta.

[No. 79/63/CDN.]

ORDERS

Calcutta, the 17th August 1963

S.O. 2882.—Whereas M/s. Narain Prasad and Co., Cross Street, Calcutta or any Bank or any other person have not come forward furnishing sufficient cause, against Notice No. 55/63/CDN, dated the 6th July, 1963, proposing to cancel licence No. E227924/61, dated 14th May, 1962, valued at Rs. 500 for the Import of Betelnuts from the General Area except South and South West Africa, granted to the said M/s. Narain Prasad and Co., 208, Cross Street, Calcutta, the Deputy Chief Controller of Imports & Exports, Government of India, in the Ministry of International Trade, in exercise of the powers conferred by clause 9 of the Imports (Control) Order, 1955, hereby cancel the said licence No. E227924/61, dated 14th May, 1962, issued to said M/s. Narain Prasad and Co., 208, Cross Street, Calcutta.

[No. 55/63/CDN.]

S.O. 2883.—Whereas M/s. Narain Prasad and Co., 208, Cross Street, Calcutta, or any Bank or any other person have not come forward furnishing sufficient cause, against Notice No. 55/63/CDN, dated 6th July, 1963, proposing to cancel licence No. E223574/61, dated 8th August, 1962, valued at Rs. 250 for the import of Betelnuts from the Central Area except South and South West Africa, granted to the said M/s. Narain Prasad & Co., 208, Cross Street, Calcutta, the Dy. Chief Controller of Imports & Exports, Government of India, in the Ministry of International Trade, in exercise of the powers conferred by clause 9 of the Imports (Control) Order, 1955, hereby cancel said licence No. E223574/61, dated 8th August, 1962, issued to the said M/s. Narain Prasad & Co., 208, Cross Street, Calcutta.

[No. 55/63/CDN.]

P. K. BISWAS,

Dy. Chief Controller of Imports & Exports.

(Office of the Joint Chief Controller of Imports & Exports)

ORDERS

Calcutta, the 18th September 1963

S.O. 2884.—Whereas M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta or any Bank or any other person have not come forward furnishing sufficient cause against Notice No. 49/63/CDN, dated 1st July, 1963, proposing to cancel licence No. A961395/62/AU-NS/CCI/C, dated 16th February, 1963, valued at Rs. 4410 for the import of Tallow falling under Sr. No. 60 of Part IV from the Soft Currency Area except Union of South Africa, granted to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta, the Deputy Chief Controller of Imports and Exports, Government of India, in the Ministry of International Trade, in exercise of the powers conferred by Clause 9 of the Imports (Control) Order, 1955, hereby cancel the said licence No. A961395/62/AU-NS/CCI/C, dated 16th February, 1963, issued to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta.

[No. 49/63/CDN.]

S.O. 2885.—Whereas M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta or any Bank or any other person have not come forward furnishing sufficient cause against Notice No. 49/63/CDN, dated 1st July, 1963, proposing to cancel licence No. A655436/61/AU-NS/CCI/AU-VI/C, dated 15th March, 1962, valued at Rs. 2550 for the import of Copra falling under Sr. No. 38 of Part IV from the Soft Currency Area except Union of South Africa, granted to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta, the Deputy Chief Controller of Imports and Exports, Government of India, in the Ministry of International Trade, in exercise of the powers conferred by Clause 9 of the Imports (Control) Order, 1955, hereby cancel the said licence No. A655436/61/AU-NS/CCI/AU-VI/C, dated 15th March, 1962, issued to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta.

[No. 49/63/CDN.]

S.O. 2886.—Whereas M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta or any Bank or any other person have not come forward furnishing sufficient cause against Notice No. 49/63/CDN, dated 1st July, 1963, proposing to cancel licence No. A652459/61/AU-NS/CCI/AU-VI/C, dated 16th February, 1963, valued at Rs. 2630 for the import of Tallow falling under Sr. No. 60 of Part IV from the Soft Currency Area except Union of South Africa, granted to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta, the Deputy Chief Controller of Imports and Exports, Government of India, in the Ministry of International Trade, in exercise of the powers conferred by Clause 9 of the Imports (Control) Order, 1955, hereby cancel the said licence No. A652459/61/AU-NS/CCI/AU-VI/C, dated 16th February, 1963, issued to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta.

[No. 49/63/CDN.]

S.O. 2887.—Whereas M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta or any Bank or any other person have not come forward furnishing sufficient cause against Notice No. 49/63/CDN, dated 1st July, 1963, proposing to cancel licence No. A961780/62/AU-NS/CCI/C/AU-VI, dated 21st January, 1963, valued at Rs. 544 for the import of Oil Citronela falling under Sr. No. 127-129 of Part IV from the Soft Currency Area except Union of South Africa, granted to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta, the Deputy Chief Controller of Imports and Exports, Government of India, in the Ministry of International Trade, in exercise of the powers conferred by Clause 9 of the Imports (Control) Order, 1955, hereby cancel the said licence No. A961780/62/AU-NS/CCI/C/AU-VI, dated 21st January, 1963, issued to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta.

[No. 49/63/CDN.]

S.O. 2888.—Whereas M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta or any Bank or any other person have not come forward furnishing sufficient cause against Notice No. 49/63/CDN, dated 1st July, 1963, proposing to cancel licence No. A961482/62/AU-NS/CCI/C, dated 21st February, 1963, valued at Rs. 1488 for the import of Oil Citronela (falling under Sr. No. 127-129 of Part IV), from the Soft Currency Area except Union of South Africa, granted to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta, the Deputy Chief Controller of Imports and Exports, Government of India, in the Ministry of International Trade, in exercise of the powers conferred by Clause 9 of the Imports (Control) Order, 1955, hereby cancel the said licence No. A961482/62/AU-NS/CCI/C, dated 21st February, 1963, issued to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta.

[No. 49/63/CDN.]

S.O. 2889.—Whereas M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta or any Bank or any other person have not come forward furnishing sufficient cause, against Notice No. 49/63/CDN, dated 1st July, 1963, proposing to cancel Licence No. A654941/61/AU-NS/CCI/AU-VI/C, dated 31st March, 1962, valued at Rs. 1320 for the import of Oil Citronela falling under Serial No. 127-129 of Part IV from the Soft Currency Area except Union of South Africa, granted to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta, the Dy. Chief Controller of Imports and Exports, Government of India, in the Ministry of International Trade, in exercise of the powers conferred by clause 9 of the Imports (Control) Order, 1955, hereby cancel the said licence No. A654941/61/AU-NS/CCI/AU-VI/C, dated 31st March, 1962, issued to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta.

[No. 49/63/CDN.]

S.O. 2890.—Whereas M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta or any Bank or any other person have not come forward furnishing sufficient cause against Notice No. 49/63/CDN, dated 1st July, 1963 proposing to cancel licence No. A557635/62/AU-NS/CCI/AU-VI/C, dated 31st December, 1962, valued at Rs. 1,700 for the import of N.E. Oils falling under Sr. No. 127-129 of Part IV from the Soft Currency Area except Union of South Africa, granted to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta, the Deputy Chief Controller of Imports and Exports, Government of India, in the Ministry of International Trade, in exercise of the powers conferred by Clause 9 of the Imports (Control) Order, 1955, hereby cancel the said licence No. A557635/62/AU-NS/CCI/AU-VI/C, dated 31st December, 1962, issued to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta.

[No. 49/63/CDN.]

S.O. 2891.—Whereas M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta or any Bank or any other person have not come forward furnishing sufficient cause against Notice No. 49/63/CDN, dated 1st July, 1963, proposing to cancel licence No. A654456/61/AU-NS/CCI/AU-VI/C, dated 9th April, 1962, valued at Rs. 3,200 for the Import of Palm Oil falling under serial No. 61(B) of Part IV from the Soft Currency Area except Union of South Africa, granted to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta, the Deputy Chief Controller of Imports and Exports, Government of India, in the Ministry of International Trade, in exercise of the powers conferred by clause 9 of the Imports (Control) Order, 1955, hereby cancel the said licence No. A654456/61/AU-NS/CCI/AU-VI/C, dated 9th April, 1962, issued to the said M/s. Jayshree Soap Works, 4/45, Chanditala Lane, Calcutta.

[No. 49/63/CDN.]

J. MUKHERJI,
Dy. Chief Controller of Imports and Exports.

MINISTRY OF FOOD AND AGRICULTURE

(Department of Agriculture)

New Delhi, the 1st October 1963

S.O. 2892.—In exercise of the powers conferred by section 3 of the agricultural produce (Grading and Marking) Act, 1937 (1 of 1937), the Central Government hereby makes the following rules to amend the Chillies Grading and Marking Rules, 1962, the same having been previously published as required by the said section, namely:—

1. These rules may be called the Chillies Grading and Marking (Amendment) Rules, 1963.
2. In the Chillies Grading and Marking Rules, 1962, for Schedules I to V, the following Schedules shall be substituted, namely:—

"SCHEDULE I
(See rules 3 and 4)

Grade designations and definitions of quality of chillies commercially known as SANNAM, produced in the State of Madras and harvested in January August

Grade designation	Trade Name	Length in C. M.	Colour	Special characteristics							General Characteristics	
				Maximum limit of tolerance								
				Damaged and discoloured pods	Pods without stalk	Moisture	Loose seed	Foreign matter	Broken chillies	%		
I	2	3	4	5	6	7	8	9	10	%	II	
M.S.S.	Madras Sannam Special.	5 and above	Light red shining.	2.00	2.00	11.50	1.00	1.00	5.00	5.00	Chillies shall— (a) be the dried ripe fruits belonging to the species <i>Capsicum annuum L.</i>	
M.S.G.	Madras Sannam General.	Below 5 and above 3.5	Light red shining.	4.00	3.00	11.50	2.00	2.00	7.00	7.00	(b) have shape, pungency and seed contents normal to the variety;	
M.S.F.	Madras Sannam Fair.	Do.]	Dull red.	6.00	4.00	11.50	2.00	2.00	7.00	7.00	(c) be free from mould or insect damage and be in sound condition, and fit for human consumption.	
MSNS	Non-specified	..	..	..	..	15.00	..	5.00	..	..	(d) be current year's crop and shall be free from extraneous colouring matter, oil and other harmful substances.

Basis of quantitative determination :—All determinations and percentages shall be reckoned on the basis of the total weight of representative samples.

Length : The tolerance specified in column 3 shall be based upon the average length of 20 fruits selected at random. The measurement will be taken from the tip of the fruit to the pedicel point (where the stalk is attached).

Discoloured Pods Pods having brown, black, white and other coloured patches will be considered as discoloured pods.

Foreign matter All extraneous matter including calyx pieces and loose stalks will be treated as foreign matter. For accidental errors, a tolerance is permissible upto 5.0 per cent in excess of the tolerance specified under column 3 in respect of M.S.S. and M.S.G. Grade. For accidental errors, a tolerance of 0.5 per cent under column 5 and 1.0 per cent under column 6 is permissible for both the grades.

Moisture: For accidental error a tolerance of 0.5 per cent for moisture content will be allowed over and above 11.5 per cent only. No tolerance will be allowed for Grade MSNS.

MSNS "Firm Order" The chillies which do not conform to any of the Higher grades, shall be packed under GRADE MSNS against a 'Firm Order' only. This means that the entire value of the goods contracted for, should have been obtained in advance by opening a cent per cent irrevocable letter of credit in India, which is encashable on the production of shipping bill supported by receipt of shipment or is guaranteed in any other way.

SCHEDULE II
(See rules 3 and 4)

Grade designations and definitions of quality of chillies commercially known as SANNAM, produced in the State of Madras and harvested in September-December

Grade designation	Trade Name	Length in C.M.	Colour	Special Characteristics							General Characteristics	
				Maximum limit of tolerance								
				Damaged and discoloured pods	Pods without stalk	Moisture	Loose seed	Foreign matter	Broken chillies			
1	2	3	4	5	6	7	8	9	10	11		
M.S.S.	Madras Sannam Special.	5 and above	Light red shining to Light red dull.	5%	10.00	11.50	3.0	1.0	0.50	Chillies shall—	(a) be the dried ripe fruits belonging to the species <i>Capsicum annuum</i> L.	
M.S.G.	Madras Sannam General.	Below 5 and above 3.	Do.	..	20.00	11.50	3.0	1.0	2.00	(b)	have shape, pungency and seed contents normal to the variety.	
M.S.N.S.	Non-specified.	..	..	..	..	15.00	..	5.0	..	c)	be free from mould or insect damage and be in sound condition and fit for human consumption;
										d)	be current year's crop and should be free from extraneous colouring matter, oil and other harmful substances.	

Basis of quantitative determinations. All determinations and percentages shall be reckoned on the basis of the total weight of representative samples.

Length	The tolerance specified in col. 3 shall be based upon the average length of 20 fruits selected at random. The Measurement will be taken from the tip of the fruit to the pedicel point (where the stalk is attached).
Discoloured pods	Pods having brown, black, white and other coloured patches will be considered as discoloured pods.
Foreign Matter	All extraneous matter including calyx pieces and loose stalks will be treated as foreign matter. For accidental errors, a tolerance is permissible upto 5.0% in excess of the tolerance specified under col. 3, in respect of M.S.S. Grade and M.S.G. Grade. For chdental errors, a tolerance of 0.5% under col. 5 and 1% under col. 6 is permissible for both grades.
Moisture	For accidental errors a tolerance of 0.5% for moisture content will be allowed over and above 11.5% only. No tolerance will be admissible for Grade MSNS.
MSNS Firm Order"	The chillies which do not conform to any of the higher grades, shall be packed under Grade MSNS, against "Firm Order" only. means that the entire value of goods contracted for, should have been obtained in advance by opening a cent per cent irrevocable letter of credit in India, which is encashable on the production of shipping bill supported by receipt of shipment or is guaranteed in any other way.

SCHEDULE III
(See rules 3 and 4)

Grade designations and definitions of quality of chillies commercially known as MUNDU produced in RAMANATHPURAM District of Madras State

Grade designation	Trade Name	Length in cm.	Colour	Special characteristics							General characteristics	
				Maximum limits of tolerance								
				Damaged and discoloured pods	Pods without stalk	Moisture	Loose seed	Foreign matter	Broken Chillies			
I	2	3	4	5	6	7	8	9	10	II		
M.M.S. .	Madras Mundu Special	Not exceeding 2·5 cm.	Deep red shining	% 2·0	% 5·0	% 11·50	% 1·00	% 1·00	% 1·00	Chilles shall—	(a) be the dried ripe fruits belonging to the species <i>Capsicum annuum</i> L.	
M.M.G. .	Madras Mundu General.	Do.	Do.	4·0	10·0	11·50	1·0	1·00	1·00	(b) have shape, pungency and seed contents normal to the variety;		
MMNS .	Non-Specified.	..	..	..	..	15·00	..	5·00	..	(c) be free from mould or insect damage and be in sound condition and fit for human consumption;	
										(d) be current year's crop and shall be free from extraneous colouring matter, oil and other harmful substances.		

Basis of quantitative determinations. All 'determinations and percentages shall be reckoned on the basis of total weight of representative samples.

Length Tolerance specified in col. 3 shall be based upon the average length of 20 fruits selected at random. The measurement will be taken from the tip of the fruits to the pedicel point (where the stalk is attached).
Discoloured pods Pods having brown, black, white and other coloured patches will be considered as discoloured pods.
Foreign matter All extraneous matter including calyx pieces and loose stalks will be treated as foreign matter. For accidental errors, a tolerance of 0·5% under col. 5 and 1·0% under col. 6 is permissible for both the grade.
Moisture For accidental errors a tolerance of 0·5% for moisture content will be allowed over and above 11·5% only. No tolerance will be admissible for Grade MMNS.
MMNS Firm Order" The chillies which do not conform to any of the higher grades, shall be packed under Grade MMNS. against a "Firm Order" only. This means that the entire value of goods contracted for, should have been obtained in advance by opening a cent per cent irrevocable letter of credit in India, which is encashable on the production of shipping bill supported by receipt of shipment or is guaranteed in any other way.

SCHEDULE IV
(See rules 3 and 4)

Grade designations and definitions of quality of chillies commercially known as RARI (Patarki or Patli) Produced in the State of Bihar.

Grade designation	Trade Name	Length in c.m.	Colour	Special Characteristics							General Characteristics	
				Maximum limit of tolerance								
				Damaged and dis-coloured red pods	Pods without stalks	Moisture	Loose seed	Foreign matter	Broken chillies			
I	2	3	4	5	6	7	8	9	10	II		
B.R.S.	Bihar Rari Special	8 and above	Bright red	1·0%	2·0%	11·50%	1·0%	1·0%	5·0%	Chillies shall—	(a) be the dried ripe fruits belonging to the species <i>Capsicum annuum</i> L.	
B.R.G.	Bihar Rari General.	Below 8 and above .6.	Do.	2·0	2·0	11·50	1·0	1·0	5	(b)	have shape, pungency and seed contents normal to the variety;	
B.R.N.S.	..	..	..	..	..	15·00	..	..	..	(c)	be free from mould or insect damage and be in sound condition and fit for human consumption;
										(d)	be current year's crop and shall be free from extraneous colouring matter oil and other harmful substances.	

Basis of quantitative determinations. All determinations and percentages shall be reckoned on the basis of the total weight or representative samples.

Length The tolerance specified in col. 3 shall be based upon the average length of 20 fruits selected at random. The measurement will be taken from the tip of the fruits to the pedicel point (where the stalk is attached).

Discoloured pods Pods having brown, black, white and other coloured patches will be considered as discoloured pods.

Foreign matter All extraneous matter including calyx pieces and loose stalk will be treated as foreign matter. For accidental errors, a tolerance permissible upto 5·0% in excess of the tolerance specified under col. 3 in respect of B.R.S. Grade and B.R.G. Grade. For accidental errors, a tolerance of 0·5% under col. 5 and 1·0% under col. 6 is permissible for both the grades.

Moisture For accidental error a tolerance of 0·5% for moisture content will be allowed over and above 11·5% only. No tolerance will be admissible for GRADE B.R.N.S.

B.R.N.S. The chillies which do not conform to any of the higher grades shall be packed under Grade BRNS against "Firm Order" only.

"Firm Order" means that the entire value of the goods contracted for, should have been obtained in advance by opening a cent per cent irrevocable letter of credit in India which is encashable on the production of shipping bill supported by receipt of shipment or is guaranteed in any other way.

SCHEDULE V.
(See rules 3 and 4)

Grade designations and definitions of quality of chillies commercially known as GOSPUREA produced in the State of Bihar

Grade designation	Trade Name	Length in cm.	Colour	Special Characteristics							General Characteristics	
				Maximum limits of tolerance								
				Damaged and discoloured pods	Pods without stalk	Moisture	Loose seed	Foreign matter	Broken chillies			
I	2	3	4	5	6	7	8	9	10	11		
B.G.S.	Bihar Gospurea Special.	5 and above 5.	Bright red	% 2.0	% 2.0	% 11.50	% 1.0	% 1.0	% 5.0	Chillies shall— (a) be the dried ripe fruits belonging to the species <i>Capsicum annum L.</i> ; (b) have shape, pungency and seed contents normal to the variety. (c) be free from mould or insect damage and be in sound condition and fit for human consumption; (d) be current year's crop and shall be free from extraneous colouring matter, oil and other harmful substances.		
B.G.G.	Bihar Gospurea General	Below 5 and above 3.	Do.	3.0	2.0	11.50	1.0	1.0	5.0			
BGNS	Non-specified	..	..	..	..	15.00	..	5.0	..	

Basis of quantitative determinations. All determinations and percentages shall be reckoned on the basis of the total weight of representative samples.

Length The tolerance specified in col. 3 shall be based upon the average length of 20 fruits selected at random. The measurement will be taken from the tip of the fruit to the pedicel point (where the stalk is attached).

Discoloured pods Pods having brown, black, white and other coloured patches will be considered as discoloured.

Foreign matter All extraneous matter including calyx pieces and loose stalks will be treated as foreign matter. For accidental errors, a tolerance is permissible upto 5.0% in excess of tolerance specified in col. 3 under B.G.S. and B.G.G. Grades. For accidental errors, a tolerance of 0.5% under col. 5 and 1.0% under col. 6 is permissible for both the grades.

Moisture For accidental error a tolerance of 0.5% for moisture content will be allowed over and above 11.5% only. No tolerance will be admissible for GRADE BGNS.

BGNS The chillies which do not conform to any of the higher grades, shall be packed under Grade BGNS against "Firm Order" only. "Firm Order" means that the entire value of the goods contracted for, should have been obtained in advance by opening a cent per cent irrevocable letter of credit in India, which is encashable on the production of shipping bill supported by receipt of shipment or is guaranteed in any other way."

New Delhi, the 3rd October 1963

S.O. 2893.—In exercise of the powers conferred by section 6 of the Agricultural Produce (Grading and Marking) Act, 1937, (1 of 1937), the Central Government hereby declares that the provisions of the said Act shall apply to the following article, namely:—

Poppy seed.

[No. F. 17-27/63-AM.]

V. S. NIGAM, Under Secy.

MINISTRY OF HEALTH

ORDER

New Delhi, the 3rd October 1963

S.O. 2894.—Whereas the Government of India in the Ministry of Health has, by notification No. F. 16-3/61-MI, dated the 27th June, 1961, made in exercise of the powers conferred by sub-section (1) of section 14 of the Indian Medical Council Act, 1956, (102 of 1956), recognised the medical qualification "M.D. (Harvard-U.S.A.)" for the purpose of the said Act;

Now, therefore, in exercise of the powers conferred by the proviso to sub-section (1) of section 14 of the Indian Medical Council Act, 1956, (102 of 1956), the Central Government hereby specifies the period of two years with effect from the date of this Order or so long as Dr. Hale H. Cook, who possesses the said qualification, continues to work with the American Marathi Mission, in the Ahmednagar, Satara, Bombay and Sholapur Districts in the State of Maharashtra to which he is attached for the time being for the purposes of teaching, research or charitable work, whichever is shorter, as the period to which the medical practice of the said Dr. Hale H. Cook shall be limited.

[No. F. 32-11/63-MPT.]

B. B. L. BHARADWAJ, Under Secy.

MINISTRY OF TRANSPORT

(Transport Wing)

(MERCHANT SHIPPING)

New Delhi, the 3rd October 1963

S.O. 2895.—In exercise of the powers conferred by sub-sections (1) and (2) of section 336 of the Merchant Shipping Act, 1958, (44 of 1958), the Central Government hereby specially extends the said section to the Port of Bedi Bunder and appoints the Nautical Surveyor and the Engineer and Ship Surveyor, attached to the Mercantile Marine Department, Bedi Bunder, Jamnagar, as "detaining Officers" at that Port.

[No. F. 24-MA(7)/63.]

D. S. NIM, Dy. Secy.

(Civil Aviation Wing)

New Delhi, the 5th October 1963

S.O. 2896.—In pursuance of sub-rule (2) of rule 3 of the Indian Aircraft Rules, 1937, the Central Government hereby authorises Aircraft Inspectors-in-Charge of Inspection Offices to exercise the power to vary particulars in a certificate of airworthiness, certificate of registration or a journey log book and the power to vary entries in the Aircraft Maintenance Engineers' licences being the powers conferred on the Central Government by sub-rule (4) of rule 19 and sub-rule (9) of rule 61 respectively of the said rules and makes the following amendment in the notification of the Government of India in the Ministry of Transport and

Communications (Departments of Communications and Civil Aviation) No. AR/1937(55)/10-A/64-56 (ii), dated the 23rd July, 1959, namely:—

In the First Schedule to the said notification for the entry "13, 14, 28, 30, 33, 38, 35, 36, 40, 42, 49" in the 2nd column against "Aircraft Inspectors-in-Charge of Inspection Offices" the entry "6, 13, 14, 28, 30, 33, 35, 36, 38, 40, 42, 43, 49" shall be substituted.

[No. F. 10-A/11-62 Pt. I/AR/1937(74).]

K. GOPALAKRISHNAN, Dy. Secy.

DEPARTMENT OF POSTS & TELEGRAPHHS

New Delhi, the 30th September 1963

S.O. 2897.—In exercise of the powers conferred by section 21 of the Indian Post Office Act, 1898 (6 of 1898), the Central Government hereby makes the following rules further to amend the Indian Post Office Rules, 1933, namely:—

1. **Short title and commencement.**—(i) These rules may be called the Indian Post Office (Eighth Amendment) Rules, 1963.

(ii) They shall come into force on the 1st day of October, 1963.

2. **Amendment of rule 44.**—In rule 44 of the Indian Post Office Rules, 1933, in the proviso to sub-rule (1), for the figures, letters and word "30th September, 1963", the figures, letters and word "31st March, 1964" shall be substituted.

[No. 48-3/62-CI.]

K. RAMAMURTHI, Director.

(P. & T. Board)

New Delhi, the 30th September 1963

S.O. 2898.—In pursuance of para (a) of Section III of Rule 434 of Indian Telegraph Rules, 1951, as introduced by S.O. No. 627, dated 8th March, 1960, the Director General Posts and Telegraphs, hereby specifies the 1st October, 1963, as the date on which the Measured Rate System will be introduced in Aurangabad Telephone Exchange.

[No. 31-21/63-PHB.]

S. RAMA IYER,
Assistant, Director General (PHB).

(P. & T. Board)

New Delhi, the 30th September 1963

S.O. 2899.—In exercise of the powers conferred by Sections 35 and 36 of the Indian Post Office Act, 1898 (6 of 1898), the Central Government hereby makes the following rules further to amend the Indian Post Office Rules, 1933, namely:—

1. These rules may be called the Indian Post Office (Ninth Amendment) Rules, 1963.

2. In the Indian Post Office Rules, 1933—

(1) In sub-rule (1) of rule 109,—

(a) in column 2 against item 1, for the words "Ceylon and Pakistan" the words "and Ceylon" shall be substituted;

(b) item 2 shall be omitted and items 3 and 4 shall be re-numbered as items 2 and 3 respectively;

(c) in item 2 as so re-numbered, for the existing entry in column 2, the following shall be substituted, namely:—

"The Seychelles and Somali Republic (Northern Region)".

(d) in clause (a) of sub-rule (4), the word "Pakistan" shall be omitted,

(2) in sub-rule (1) of rule 109A, the word "Brunei" shall be omitted.

[No. 8/7/63-CF.]

S. M. GHOSH, Director (Mails).

MINISTRY OF WORKS, HOUSING REHABILITATION

(Department of Works & Housing)

New Delhi, the 20th September 1963

S.O. 2900.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (32 of 1958), the Central Government hereby cancels the appointment of the Administrative Officer, Office of the Chief Administrative Officer, Ministry of Defence, New Delhi, made as Estate Officer under the said Act in the notification to the Government of India in the Ministry of Works, Housing and Supply No S.O. 891, dated the 22nd April, 1961.

[No. F. 32/19/63-Acc.II.]

S. L. VASUDEVA, Under Secy.

(Department of Rehabilitation)

(Office of the Chief Settlement Commissioner)

New Delhi, the 5th October 1963

S.O. 2901.—In exercise of the powers conferred by Sub-Section (1) of Section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) the Central Government hereby appoints with effect from 1st May, 1963 Shri A. N. Dixit, Assistant Settlement Commissioner-in-Charge, Lucknow as Settlement Commissioner for the purpose of performing the functions assigned to such Commissioner by or under the said Act

[No. 5(4)/ARG/62.]

KANWAR BAHADUR,
Settlement Commissioner (A) & Ex-Officio Dy. Secy.

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 30th September 1963

S.O. 2902.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, DILIANBAD, in the industrial dispute between the employers in relation to the Toposi Colliery and their workmen, which was received by the Central Government on the 24th September, 1963.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DILIANBAD

In the matter of a Reference under Section 10(1)(d) of Industrial Disputes Act, 1947, (XIV of 47)

REFERENCE NO. 44 OF 1962

PARTIES:

Employers in relation to Toposi Colliery

AND

Their workmen

PRESENT:Shri Raj Kishore Piasad, M.A., B.L.—*Presiding Officer.***APPEARANCES:**

For the Employers.—Sri H. L. Roy, Advocate, with Sri P. R. Ghosh, Manager, and Sri P. K. Nandi, Labour Welfare Officer.

For the Workmen.—Sri S. Mukherjee, Advocate, with Sri Rabin Chatterjee for the Union.

Dhanbad, dated the 13th August, 1963.

STATE: West Bengal.

INDUSTRY: Coal.

AWARD

The Ministry of Labour and Employment, Government of India, by its Order No. 6/3/62-LMII, dated the 21st November, 1962, referred, under Section 10(1)(a) of the Industrial Disputes Act, 1947, (XIV of 1947), to this Tribunal, the following item of dispute for adjudication:

"Whether the order dated the 8th September, 1962, issued by the Manager of the Topsi Colliery dismissing Sri Bikash Das, Pump Khalasi, with retrospective effect, viz., from 2nd September, 1962, is lawful. If not, to what relief the workman is entitled?".

2. The colliery Mazdoor Sabha, representing the workman concerned, filed a written statement on 11th December, 1962, on his behalf. The case of the workman was that his dismissal was as a result of the policy of 'hire and fire' adopted by the management by way of victimisation and that the alleged so-called domestic enquiry into the charge sheets issued against him for sleeping on duty was illegal and unjustified and in violation of the principles of natural justice. It was also said that his dismissal with retrospective effect was also illegal.

3. The management also filed a written statement on 24th December, 1962, by way of rejoinder, in which its defence was that the domestic enquiry held by the company was fair, proper and according to the principles of natural justice and the workman concerned was given all possible opportunities to defend himself and even his request for being represented by the Vice President of his Union was acceded to. The main defence, however, of the management was that the workman was found sleeping during duty hours, which was illegal, being prohibited by Regulation No. 38(6) of the Coal Mines Regulation, 1957 and as the workman was found guilty of the offence of sleeping on duty hours on three occasions and was found guilty of the charges, he was dismissed from the company's service. It was further stated by the management that the dismissal, although made with retrospective effect should be deemed to be prospective from the date of issue of the letter of dismissal. The management denied that the dismissal of the workman was by way of victimisation.

4. The workman, in support of his case, examined himself, Sri Bikash Chandra Das W.W. 1, only and also filed documents, which were marked Exhibits W. to W. 37. Sri S. Mukherjee, Advocate with Sri Rabin Chatterji of the Union, represented the workman concerned.

5. The management also examined five witnesses, viz., Sri Probhak Ranjan Ghosh, Manager of the Topsi Colliery—M.W. 1; Sri Parimal Kanti Nandi, M.W. 2, Labour Welfare Officer who held the departmental enquiry; Sri Nalin Rajan Das, Overman of the Colliery, M.W. 3, Sri Nirmal Kumar Paitundi, Mining Sirdar, M.W. 4, and, Sri Shiva Pada Roy Chowdhury, Attendance Clerk of the Colliery, M.W. 5. The management also filed documents, in support of its case, which were marked Exhibits M. to M. 38 and was represented at the hearing by Sri M. L. Roy, Advocate, with Sri P. R. Ghose, Manager and Shri P. K. Nandi, Labour Welfare Officer of the Colliery.

6. The principal questions, which arise for decision in the reference, are (1) If the retrospective order of dismissal is valid?

(2) If the domestic enquiry was fair and in compliance with the principles of natural justice? and

(3) was the dismissal of the workman by way of victimisation.

I will take up these three questions seriatim in the order in which they are set out above.

QUESTION No. (1)

7. It has been stated by the management that the retrospective order is wrong, and, therefore, it should be deemed to be prospective with effect from the date of the order of the dismissal issued on 8th September, 1962, instead of with effect from 2nd September, 1962, as mentioned in the letter of dismissal, Exhibit W. 23—M. 1. It was further stated that for this reason the workman would be entitled to full wages and other benefits from 2nd September, 1962, to 8th September, 1962. On this concession, I do not think it is necessary to pursue the matter any further.

I, therefore, hold, on the concession made by the management, that the order of dismissal is effective with effect from 8th September, 1962, and not from 2nd September, 1962, and that the order of dismissal with retrospective effect is invalid and, therefore, the workman is entitled to his full wages and other benefits from 2nd September, 1962, to 8th September, 1962.

QUESTION NO. (2)

8. On the evidence and on an examination of the records of the departmental enquiry, which have been filed before me, and, exhibited as Exhibits M. to M. 29, I am satisfied that the domestic enquiry was fair and in accordance with the principles of natural justice and that the workman was given ample opportunity to defend himself, and, therefore, this question must be answered in the affirmative and in favour of the management. I will give my reasons below.

9. It will appear that the first charge sheet was served on the workman concerned on 31st August, 1962. The first charge sheet is dated 31st August, 1962, and is Exhibit M. 25 = W. 17 for sleeping at 8:15 P.M. while on duty on 31st August, 1962. Report Exhibit M. 5 of even date was submitted by M.W. 3, the overman in charge regarding this. The workman replied to it on 1st September, 1962, and his reply is Exhibit M. 24 = Exhibit W. 18. A second report dated 1st September, 1962, Exhibit M. 4 was submitted by the mining Sirdar in charge on 1st September, 1962 for sleeping on 1st September, 1962, at 7:15 A.M. and on the basis of the said report a charge sheet on 1st September, 1962, Exhibit M. 28= Exhibit W. 19 was served on the workman concerned and in this the previous charge sheet Exhibit M. 23 and another earlier charge sheet Exhibit M. 24, dated 24th August, 1962, were mentioned. The workman sent reply to the charge sheet Exhibit M. 28 and in the said reply Exhibit M. 27 the workman denied the charge. A notice dated 2nd September, 1962, Exhibit M. 29= W. 21 was served on the workman informing him that an enquiry into the charge sheet M. 28, would be held on 3rd September, 1962, and the workman on 3rd September, 1962, applied for being represented by his Union. The management allowed his prayer and informed him by a letter on 3rd September, 1962, Exhibit W. 22. But the Union never represented. An enquiry proceeding was held by the Enquiry Officer M.W. 2, on 3rd September, 1962, and 4th September, 1962, and the enquiry papers are Exhibits M to M. 29, which include the statement of the workman Exhibit M. 6; the statement of his defence witness Exhibit M. 15, besides the statements of the witnesses examined by the company, of M.W. 3 and M.W. 4, have been examined before the Tribunal also.

It, further, appears that the workman cross-examined some of the witnesses and he was given full opportunities to defend himself and to examine his witnesses and the workman examined Sri Sudhir Mondal, Exhibit M. 15, as his witness. Although the enquiry was held for two days i.e., on 3rd September, 1962, and on 4th September, 1962, the workman never complained admittedly in writing before the Enquiry Officer about his alleged grievances which were put down on 5th September, 1962, in a protest petition Exhibit W. 24, after the enquiry was over. The Enquiry Officer submitted his report Exhibit M. 1, in which he found the workman guilty of sleeping while on duty on 31st August, 1962, and 1st September, 1962, and mentioned that in the past also he was found guilty of such offence and was warned.

Admittedly the workman concerned was pump khalusi at the time of his dismissal and his duty was to operate electric pump for de-watering from the incline of the Colliery where water was logging in underground workings as will appear from the enquiry report dated 7th September, 1962, Exhibit M. 2.

From this short resume it is plain that the enquiry was fair and it could not be attacked on any ground whatsoever.

It was, however, contended by the Union that the workman was informed about his prayer to be represented by the Union having been allowed on 3rd September, 1962, and therefore the enquiry should have been adjourned that day to enable him to bring any representative of his Union but in my opinion, there is no substance in this contention for the simple reason that the workmen never asked or filed a petition on 3rd September, 1962, before the Enquiry Officer on this ground or even on 4th September, 1962, to which day the enquiry was adjourned.

The case of the workman that he made oral protest cannot be accepted for the obvious reason that no written complaint was made before the Enquiry Officer who denied this allegation.

The next grievance of the workman that questions and answers in the cross-examination of the company's witnesses by the workman were not fully recorded must also be rejected because no such grievance was made in writing before the Enquiry Officer either on 3rd September, 1962, or 4th September, 1962, when the enquiry was being conducted. The fact that a protest petition was filed on 5th September, 1962, Exhibit W. 24, is in my opinion, of no value, because it was an after-thought obviously at the instance of the Union or his legal adviser.

For the above reasons I have no hesitation in holding that the domestic enquiry was fair and the workman was given fullest opportunity to cross-examine the company's witnesses and to adduce evidence in his defence and that the workman was never denied any opportunity at all. I, therefore, reject the contention of the workman and accept the contention of the management by holding that the departmental enquiry was fair, valid and reasonable.

QUESTION No. (3)

10. The third question, in my opinion, is the crucial one, and, on this decision hinges the case of the workman concerned. It was strenuously urged by Sri Mukherjee that the dismissal of the workman was by way of victimisation, as it will appear from the facts placed before me, which will be set out herein below. I find that this contention of the workman is well founded.

11. The following facts, which are being mentioned in their chronological order, are very revealing and, in my opinion, fully establish beyond any reasonable doubt that the dismissal of the workman was pre-planned and pre-determined because of the annoyance of the management with the workman concerned. The admitted facts are these:

- (a) On 1st June, 1962, the concerned workman made a complaint to the management to the effect *inter alia* that he was working as Assistant Fitter but he was forced to work on 17th May, 1962, on the post of pump khalasi and was also abused by Sri Sishir Paku and this has very much affected him and, therefore, he should be appointed to his previous post of Fitter;
- (b) On 1st August, 1962, the Vice-President of the Union, Sri Rabin Chatterjee, sent a letter Exhibit W. 1 to the Manager to Topsi Colliery complaining against wrongful dismissal of two workmen and several other matters including Rest Days to the Pump Khalasis. This letter Exhibit W. 1 deals with Pump Khalasis in para 4 and it says that these workmen are not given Rest Days as fixed as a result of which they are often facing difficulties and their personal programme suffers. It further stated that there are some instances when the pump khalasis working in the third shift are being compelled to work next day too i.e., for 16 hours consecutively. The Union, therefore, asked the Manager to rectify all these mistakes. The workman concerned was one of these Pump Khalasis;
- (c) On 20th August, 1962, the Vice President of Colliery Mazdoor Sabha sent a letter Exhibit W. 2, to the Manager of the Colliery complaining that Sri Bikash Dass, a Pump Khalasi, the workmen concerned, had been getting two bottles of kerosene oil from very long time but this facility had been stopped with effect from 18th August, 1962, and, therefore, this should be restored. In Exhibit W. 2 it was further stated that it was reported to the Union that on 19th August, 1962, at 7:30 A.M. the concerned workman was abused by the Manager in a filthy language.
- (d) On 20th August, 1962, the same day, the workman concerned also sent a complaint in Bengali, Exhibit W. 3, to the Officer in Charge, Jamuria Police Station, with a copy to the Vice President of the Union, Regional Labour Commissioner, Sub-Divisional Officer, Asansol, and Conciliation Officer, complaining that the previous day (on 19th August, 1962), his supply of kerosene oil was stopped and he went to the Manager to complain but the Manager told him that he would be supplied with kerosene oil, and, thereafter, he was abused by the Manager and his staff was ready to assault him and he escaped.
- (e) On 21st August, 1962, the workman concerned sent a letter which is in Bengali to the Manager Exhibit W. 5, informing him that as he was living alone because he has sent his father, mother, and others to his home, he was asked to vacate his quarters and live somewhere else, but if he is turned out he will be left with no quarters, at all, and therefore, he should be provided with bachelor's quarters at least.

(f) On the same day i.e., on 21st August, 1962, the Union also sent an information to the Officer-in-Charge of the Police Station Exhibit M. 6 informing him that the peon of the management, named therein, forcibly trespassed into the house of the workman concerned and tried to assault and evict him with the help of *Goondas* armed with lathis and deadly weapons, and, therefore, protection may be given to the workman concerned.

(g) In pursuance of the above complaint by the Union Exhibit W. 6, and of the workman concerned, Exhibit W. 3, to the Police Station a day earlier, i.e., on 20th August, 1962, the Officer-in-Charge of the P. S. visited the spot on 20th August, 1962, or on 21st August, 1962, and saw the Manager and asked him to proceed in a legal manner.

(h) The visit of the Police infuriated the Manager and made him more adamant and determined to dismiss the workman forthwith.

(i) Therefore, two or three days after the visit of the place on 23rd August, 1962, the Manager served a notice Exhibit M. 3 = Exhibit W. 8 on the workman concerned to vacate the quarters within seven days as it was required for urgent necessity of the company immediately but he may be provided with a bachelor's accommodation and the failing compliance with this order, disciplinary action will be taken against him.

(j) On the same day on 23rd August, 1962, in reply to the workmen's letter dated 21st August, 1962, Exhibit W. 5, the manager sent a letter to the workman concerned Ext. W. 7, saying that some allegations in his petition contain insinuation against the management and, therefore he must show cause within 24 hours why disciplinary action should not be taken against him.

(k) To the above letter Exhibit M. 3 = Exhibit W. 8, the workman concerned sent a reply on 28th August, 1962, Exhibit W. 14, in which it was stated that the existing quarters allotted to him just after the completion of this block, while he was living in a hired house with his family, but it was surprising that he was asked now to vacate it without making any suitable alternative arrangement for his quarter.

(l) Immediately, next day, on 24th August, 1962, within 24 hours, the first charge sheet, Exhibit M. 21, was served on the workman concerned to the effect that he was seen by the Manager himself sleeping at night at 2 A.M. on 23rd August, 1962, and, therefore, he should show cause why disciplinary action should not be taken against him for sleeping while on duty. The workman denied the charge and submitted his reply on 25th August, 1962, Exhibit M. 22, on which Shri Nandi M.W. 2, was asked to write to the workman concerned that the Manager personally saw him sleeping. However, only a notice of warning Exhibit M. 23 was given. The said letter Exhibit M. 23 was sent on 27th August, 1962;

(m) Four days later, a second charge sheet, was served on the workman on 31st August, 1962, Exhibit M. 25, = Exhibit W. 17, to the effect that the workman concerned was found sleeping on 31st August, 1962, at 8:15 A.M. while on duty to which the workman replied Exhibit M. 24 = Exhibit W. 18 which was received on 1st September, 1962, by the management denying the charge;

(n) Next day, on 1st September, 1962, a third charge sheet was served Exhibit M. 28 = Exhibit W. 19, on the workman alleging that he was found sleeping on 1st September, 1962, at 7:13 A.M., while he was on duty which was a gross misconduct and the previous two charge sheets Exhibits M. 21 and Exhibit M. 25, were also included therein, and, thereafter, an enquiry was held and the workman was ultimately served with a notice dismissing him from service from 2nd September, 1962, Exhibit M.

12. On the foregoing facts, it is clear as day light that the management was very much annoyed with the workman because he was making complaints about his grievances to the management and insisted on his grievances being redressed and ultimately informed the police which visited the spot and this infuriated the management and immediately thereafter, next day, charges of sleeping during duty hours started pouring in from 24th August, 1962, to 1st September, 1962. It appears that after 20th August, 1962, or 21st August, 1962, when the Officer-in-Charge of Police Station visited the spot, and saw the Manager in respect of the grievances of the workman concerned, the workman started as if taking

Dr. Stephen Ward's sleeping drugs, which made the workman sleep on 23rd August, 1962, again on 31st March, 1962, and then again on 1st September, 1962, resulting in his dismissal. This is a very bitter pill to swallow. These facts do show that the dismissal of the workman concerned was predetermined, due to the Manager's annoyance with him and only by way of victimisation. Admittedly the workman had a clean record before. He was never charge sheeted for any misconduct before. He was never found even dozing, much less sleeping, any time any day before 23rd August, 1962. How is it then that the Police visits the Manager and the workman starts sleeping three or four days later. These facts, as stated above, are only to be seen in their chronological order and it will be plain that the dismissal of the workman was by way of victimisation, and, therefore, his dismissal must be set aside.

For the reasons given above I would answer the third question in the affirmative.

13. I, therefore, answer the reference in favour of the workman concerned by holding that the order of 8th September, 1962, issued by the Manager of the Topsi Colliery dismissing Sri Bikash Das with retrospective effect i.e., from 2nd September, 1962, was illegal, and, further, that the said order of dismissal was also illegal as it was by way of victimisation, and, therefore, the said order of dismissal dated 8th September, 1962, is set aside and the workman concerned is reinstated in his previous service with full back wages and other benefits and continuity of service from 2nd September, 1962, till the date of his reinstatement.

14. Ordinarily, I never allow cost to the winning party because to allow such a cost would mean to aggravate the bitterness between the parties, but, in this case, the facts and circumstances of the case are so coercive and the action of the management so condemnable and malicious that justice demands that the management must pay Rs. 200 as cost of this reference to the workman concerned.

15. The above directions must be implemented within one month from the date when this Award of mine becomes operative under Section 17A after its publication.

16. This is the Award which I make and submit to the Central Government under Section 15 of the Act.

Dated the 10th August, 1963.

Sd./- RAJ KISHORE PRASAD,
Presiding Officer,
Central Govt., Industrial Tribunal,
Dhanbad.

[No. 6/3/62-LR. II.]

S.O. 2903.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Kendwadih Colliery of Messrs Hurriladiah Coal Company Limited, Post Office Bhaga, District Dhanbad and their workmen, which was received by the Central Government on the 23rd September, 1963.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

In the matter of a Reference under clause (d) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (XIV of 47).

REFERENCE No. 23 of 1962

PARTIES:

Employers in relation to Kendwadih Colliery of Messrs. Hurriladiah Coal Co. Ltd.
P.O. BHAGA, Dist. Dhanbad.

AND

Their workmen.

RESENT:

Sri Raj Kishore Prasad, M.A., B.L., Presiding Officer:

APPEARANCES:

For the Employers:—Shri S. S. Mukherjee, Advocate, with Sri O. P. Varma

For the Workmen:—Shri S. K. Mukherjee, Advocate.

Dhanbad, dated the 24th August, 1968

STATE: Bihar.

INDUSTRY: Coal.

AWARD

The Ministry of Labour & Employment, Government of India, by its Order No. 2/45/62-LRII dated 1st August 1962 referred, under Section 10(1)(d) of the Industrial Disputes Act, 1947, (14 of 1947), an industrial dispute existing between the employers in relation to Kendwadih Colliery of Messrs. Hurriladh Coal Co. Ltd., and their workmen in respect of the matter specified below for its adjudication to this Tribunal:

"Whether the retrenchment of Sarvashri Mritunjay Bagchi, P. N. Boxi and Joy Bose, Clerks, Grade III by the management of Kendwadih Colliery of Messrs. Hurriladh Coal Company Limited, Post Office Bhaga, District Dhanbad with effect from the 18th March 1962 was justified? If not, to what relief are they entitled?"

2. The Colliery Staff Association, on behalf of the workmen concerned, filed a written statement of their claim on 26th August, 1962. The main case of the workmen was that their retrenchment was illegal because (1) the principle of 'last come first go' was not followed in as much as three workmen in the same category, who were juniors to the workmen concerned, viz., Sarvashri Budh Ram Koerl, Ramadhar Prasad and Rameshwar Sinha were not retrenched; and (2) there was no ground for retrenchment in that, that there was no decrease in the raising of coal and no ground or reason had been specified in the notice given by the management.

3. The employers in their turn filed a written statement on 4th September 1962 in which their defence was that the three retrenched workmen concerned were junior most in the Colliery and that the allegation of the workmen to the contrary was wrong, and, that there was definite decrease in the raising which made these workmen surplus, and, therefore, they were retrenched.

4. Shri S. S. Mukherjea, Advocate, with Shri O. P. Verma appeared for the management and they examined two witnesses, namely, Shri B. N. Singh, Personnel Officer of the Colliery, M.W. 1 and Sri D. G. Gupte, Agent of the Colliery M.W. 2 and also filed documents in support of their case, which were marked Exhibits M. to M. 11.

5. Shri S. K. Mukherjee, Advocate, along with the workmen concerned, appeared for them and examined one of the workmen, namely Shri Joy Bose, W.W. 1 and filed documents, which were marked Exhibits W to W. 4.

6. Only two questions arise for decision, namely, victimisation, (1) whether these three workmen concerned were the junior-most in their category and the principle of 'last come first go' was observed in retrenching them by the management, and (2) whether there was decrease in the coal raising? I will take up these two questions separately.

RE. (1)

7. As regards the first question, it may be stated at once that there is no evidence except the only statement of Sri Joy Bose—one of the three workmen concerned, W.W. 1 that these workmen were not junior most in their category but that there were three others, namely, Budh Ram, Koerl Ramadhar Prasad and Rameshwar Sinha, who were junior to them but they had not been retrenched. The management to support its case filed 'B' Form Register for 1961 Exhibit M. 11 and 'B' Form Register for 1962—the year in which the three concerned workmen were retrenched Exhibit M. 10. These two Form 'B' registers are registers of the employees in the Colliery in which the names of the workmen are mentioned seriatum. They establish beyond any reasonable doubt that these three workmen were junior to the other three workmen named by them and as such they were rightly retrenched if the retrenchment was otherwise valid and justified. There is nothing to doubt the genuineness of these two registers. It may be mentioned that the Form 'B' register for 1962 Exhibit M. 10 is written at some places and signed at many places by one of the three workmen concerned, namely, Shri P. N. Bagchi, who was the clerk in charge of this register. The workmen concerned did not examine Shri Bagchi, although he was present but it was admitted by his lawyer on instruction from Shri Bagchi that the 'B' Form register for 1962 was in his hand-writing and at the bottom at many places his signatures were there and that he was in service from 1947. For these reasons, I hold that these three workmen concerned were junior most and that the principle of 'last come first go' was observed in their cases.

RE: (2)

8. As regards the second question, the crucial point is whether there was any decrease in the coal raising or not. It is significant to note that no where either in the notice in Form 'P' or any where else the management stated that these three workmen concerned were surplus to the requirement of the management in the category they were employed because there was decrease in the raising of coal. In the argument, however, before me, the definite case put forward on behalf of the management was that there was a constant decrease in the raising, which necessitated the retrenchment in 1962, and which made the three workmen concerned surplus to the requirement in the category to the management. In my opinion, this case of the management is not substantiated. Both the management and the workmen relied on the evidence of Shri Joy Bose W.W. 1, on whose evidence the workmen relied for the out-put of raising of coal. W.W. 1 stated as below:

- (1) 1951—53—25,000 tons (approx) of coal per month.
- (2) 1957—1,17,954 tons (approx) of coal per year, which would be equivalent to about a little over 10,000 tons per month.
- (3) 1958—97,257 tons (approx) of coal a year, which would be equivalent to about a little over 8,000 tons per month.
- (4) 1959—11,12,067 tons (approx) of coal a year, which would be equivalent to a little over 9,500 tons per month.
- (5) 1960—74,952 tons (approx) of coal a year, which would be equivalent to a little over 6,000 tons per month.

It was, however, admitted by the management that there was a strike in 1960, and, therefore, output of that year was no criterion.

- (6) 1961—97,907 tons (approx) of coal per year, which would be equivalent to a little over 8,000 tons per month.
- (7) 1962—9,500—10,000 tons (approx) of coal per month.

This is the year in which the retrenchment was made.

9. The above figures given by W.W. 1 are not denied, rather admitted by the management and on the basis of this, argument was advanced by both sides. A cursory glance at the above figures will *prima facie* show that there was no decrease in the raising in 1962, which could necessitate and justify retrenchment of these three workmen concerned in 1962. The figures show that in some months it was more and in some months it was less. For instance, in 1961 although it was a little over 8,000 tons a month but no retrenchment was made but in 1962 when the raising was 10,000 tons per month, retrenchment was made. It is obvious, therefore, that the action of the management was not *bonafide* and not justified and, therefore, retrenchment cannot stand. I, therefore, hold that the retrenchment made by the management of the three workmen concerned with effect from 16th March, 1962 was unjustified.

10. I may mention here that there was serious talk of compromise between the parties and the management agreed to reinstate the workmen concerned to their previous jobs with continuity of service and to pay them $\frac{1}{2}$ of the wages, but unfortunately the workmen insisted to get $\frac{1}{2}$ the wages. Both the parties stuck to their guns with the result that neither the management went up beyond $\frac{1}{2}$ nor the workmen came down below $\frac{1}{2}$ and, therefore, the compromise failed through.

11. Taking all the facts and circumstances into consideration, I think that the reference should be decided in favour of the workmen concerned by holding that the retrenchment of Sarvashri P. N. Boxi, Mritunjoy Bagchi and Joy Bose, Clerk Grade III, by the management of Kendwadih Colliery of Messrs. Hurrilladih Coal Co. Ltd., with effect from 16th March, 1962 was not justified.

12. The next question is to what relief are these workmen entitled. There can be no doubt that, on my above finding, these three workmen are entitled to be reinstated to their previous jobs with continuity of service with effect from 16th March 1962, and, they are further entitled to wages also from 16th March 1962 till the date of their retrenchment, but, in the circumstances of the present case, I would direct that the three concerned workmen should be paid their half back wages only besides their emoluments to which they may be entitled.

13. The reference, therefore, is answered as indicated above and an Award is made accordingly.

14. This is the Award which I make and submit to the Government of India under Section 15 of the Act.

Sd/- RAJ KISHORE PRASAD,

DHANBAD.

Presiding Officer,

The 24th August, 1963.

Central Government Industrial Tribunal, Dhanbad.

[No. 2/45/62-LRIL.]

S.O. 2904.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Bombay in the industrial dispute between the employers in relation to the Bombay Port Trust and their workmen, which was received by the Central Government on the 21st September, 1963.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT BOMBAY

REFERENCE NO. CGIT-25 OF 1962

Employers in relation to the Bombay Port Trust, Bombay and the Bombay Port Trust Employees' Union

APPEARANCES:

For the employers—Shri S. D. Nariman, Legal Adviser, Bombay Port Trust.

For the workmen—Counsel Shri P. P. Khambatta with Shri P. A. Pandya, Advocate, instructed by Dr. Shanti Patel, Secretary, and Shri C. J. Deshmukh, Assistant Secretary, B.P.T. Employees' Union.

PRESENT:

Shri Salim M. Merchant, Presiding Officer.

INDUSTRY: Ports & Docks.

STATE: Maharashtra.

Bombay, dated the 20th September, 1963

AWARD

On a joint application of the parties above-named dated 27th June 1962, the Central Government, by the Ministry of Labour & Employment's Order No. 28/58/62/LRIV dated 27th July 1962, made in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), was pleased to refer the industrial dispute between the parties above-named, in respect of the following specific matters specified in the schedule to the said Order:—

"Whether the existing system of work of the shore crew of the Prince's and Victoria Docks under which each shift consists of 8 hours' normal duty, 2 hours' variable recess and 2 hours' over-time needs any modification."

2. After the said reference, the Bombay Port Trust filed its written statement on 9th October 1962, and the Bombay Port Trust Employee's Union (hereinafter called the union), filed its statement of claim in respect of this demand on 26th October 1962 to which the Bombay Port filed a rejoinder dated 6th November 1962. After the hearing had proceeded and after the Bombay Port Trust had led oral evidence and the case had reached its concluding stages, the union by an application dated 26th June 1963, applied for amending its written statement to which the Bombay Port Trust filed its reply dated 9th July 1963, after which the hearing was concluded on 11th July 1963.

3. It appears that two shift working was first introduced in the Alexandra Dock under the Trustees' Resolution No. 466 dated 30th June 1953 and in the Prince's and Victoria Docks under Trustees' Resolution No. 951 dated 15th December, 1953. Prior to 1953, the shore crew at the Alexandra Dock as also at the Prince's and Victoria Docks, used to work in a single shift and were liable to be called upon for work at any time of the day and night. Under the two shift system, each shift of 12 hours was to be deemed to consist of 8 hours normal duty, 2 hours variable from day-to-day according to the requirements of the work and the time of the tide. In 1956, the Bombay Port Trust General Workers' Union, which then represented the shore crew employed at the Alexandra Dock and the Prince's and Victoria Docks, had demanded that the workmen should be granted a fixed

recess of 2 hours instead of variable recess as had been provided in the aforesaid two Resolutions of the Bombay Port Trust (Annexure A collectively to the Bombay Port Trust's written statement). According to the Port Trust, the demand for the fixed recess was merely an indirect way of demanding 4 hours overtime and was, therefore, rejected by the Port Trust by its Trustees' Resolution dated 17th July 1956 (Annexure B), as being unreasonable. The Bombay Port Trust informed the union that in the event of the workers persisting in this demand for a fixed recess period, a system of 3 shift working with no overtime would have to be introduced. Thereupon, the said union informed the administration that at a general meeting of the shore crew of the Alexandra Dock and the Prince's and Victoria Docks, it had been decided that the workers would continue to work in two shifts with a variable recess of 2 hours, but the union requested that as far as possible the recess period should be during the middle of their shift. The Port Trust informed the union that at the Prince's and Victoria Docks the rest period would, as far as possible, be arranged so that it fell about the middle of the duty hours, but at Alexandra Dock it was decided that the rest period would as far as possible be fixed at fixed hours specified by the Port Trust. This arrangement was sanctioned by the Trustees' Resolution No. 681 dated 31st July 1956 (Annexure C to the B.P.T.'s statement). By that Resolution it was also decided that the shore crew of the Prince's and Victoria Docks would be informed each day in writing of the rest period that they would have on the next day and this system is in force even to-day. The position, therefore, as far as the recess period of 2 hours in concerned is that each worker is informed on the previous day which would be his two hours of recess on the following day.

4. The Port Trust in its written statement has pointed out the difference in working in the Alexandra Dock, which has the system of lock gates designed to regulate the depth of water in that dock at all times, and the method of work in the Prince's and Victoria Docks, which are tidal docks. Under this arrangement half of the crew at the Alexandra Dock had their recess at a time so that the other half was available for any emergent work at Ballard Pier or the Harbour Wall berths. Under this arrangement during 8 P.M. to 4 A.M. when some of the workmen would be having their rest interval no ship would be brought into or taken out of the Alexandra Dock through the lock as a full crew would be required for this operation, one crew working on the east side and the other working on the west side of the lock.

5. The Alexandra Dock has a system of lock gates designed to regulate the depth of water in the docks at all times. Therefore, normally, and except during the monsoon, operational requirements at the Alexandra Dock would not ordinarily call for any variation in the recess hours, and in actual practice, the recess had been given at fixed hours as specified in the B.P.T.'s written statement at page 2. However, during the monsoon season (July to September) and periods of cyclonic disturbances, which usually occur between or after the monsoon i.e. in April-May and October-November, shipping movements in the Alexandra Dock are subject to certain restrictions imposed by the storm-gates having to be closed to protect the lock gates from damage by the harbour swell. During this period of closure of the storm-gates, which lasts for about 4 hours twice a day during rough weather, the Alexandra Dock had to be closed to shipping. Fixed recess hours for the shore crews of the Alexandra Dock arranged in the manner stated earlier, during days when storm-gates had to be closed, resulted in shipping being denied berthing facilities for the period from 8 P.M. to 4 A.M. and also for the period of closure of the lock-gates, thus aggregating from a minimum of 8 hours to a maximum of 16 hours a day. In order to enable the Alexandra Dock to handle the maximum possible number of ships, the Port Trust considered it necessary that the shore crew should work in a system of variable recess with the recess hours coinciding with the period of closure of the storm-gates which would vary from day-to-day according to the tides. Even though under the conditions of the service of the shore crew at the Alexandra Dock, the hours of the recess were to be variable and workmen had in fact agreed that the time at which the 2 hours of recess was to be given should be variable, the Port Trust gave the union a notice under section 9A of the Industrial Disputes Act, 1947, of change in service condition dated 25th May 1960, for introducing a system of recess at variable hours, since in actual practice the shore crew as stated above, were being given their recess at fixed hours (annexure D to the B.P.T.'s written statement).

6. The union by its letter dated 13th December 1961, opposed the proposed change from fixed to variable recess. Certain correspondence ensued (see Annexure E collectively). In the meantime, according to the Bombay Port Trust's written statement, upon certain studies having been undertaken regarding the actual periods of employment of the shore crew in the 3 units of the Bombay Port Trust,

viz. the Alexandra Dock, the Prince's and Victoria Docks and Butcher Island, it was found that the crew of the Alexandra Dock had to put in more work than the shore crew in the other docks (Annexure E1 to B.P.T.'s written statement). It was, therefore, felt that the claim of the shore crew for the Alexandra Dock merited some consideration, particularly as there were proposals for stepping up the movement capacity of the Alexandra Dock. Ultimately, the Port Trust by the Trustees' Resolution No. 604 of 16th August 1961 (Annexure F), decided that the shore crew at the Alexandra Dock should work in two shifts of 12 hours each consisting of 8 hours' normal duty, 3 hours' over-time and 1 hour variable recess. The Trustees in that resolution recorded that the necessity for effecting this change in the system of working at Alexandra Dock was being made with a view to provide greater working facilities to shipping in that dock and did not hold good for the work in the Prince's and Victoria Docks and at Butcher Island. The Bombay Port Trust has in its written statement annexed a statement (Annexure G) showing the number of vessels handled at the Alexandra Dock on the one hand and at Prince's and Victoria Docks on the other, for the period 1st April 1962 to 31st August 1962. The Port Trust has urged that in these circumstances there was no case whatsoever for any increase in the over-time for the shore crew at the Prince's and Victoria Docks which demand it is stated has arisen solely out of the Trustees' decision to allow one hour extra over-time to the shore crew at the Alexandra Dock and in the circumstances mentioned in their Trustees' Resolution No. 604 dated 16th August 1961.

7. The union in its written statement dated 26th October 1962 has stated that prior to 1953, the shore crew employed in the Alexandra Dock and the Prince's and Victoria Docks used to be on duty for 24 hours in a day and they were paid one day's wages upon 9 hours work and for the rest they were paid wages equal to over-time wages for 3 hours and subsequently 4 hours recess. Thereafter, the two shift system was introduced for work in the Alexandra Dock and payment was made for 12 hours' of duty on the basis of 1 day's wages for 8 hours work and 2 hours' over-time wages for the remaining 4 hours; that thereafter the Port Trust introduced two shift-working for the shore staff at the Prince's and Victoria Docks and that of the 12 hours of work, 8 hours were paid one day's wages, 2 hours were paid as over-time and 2 hours were treated as a period of rest for the staff at both Alexandra Dock and Prince's and Victoria Docks from this time; that the introduction of the period of rest was nothing less than a device to escape the payment of over-time wages to the shore staff which would have to be paid in view of the provisions of the Minimum Wages Act and the principles of Justice and fair pay; that this so-called rest period was no rest period at all on any principle as it was given at any time during the hours of the shift from mid-night to 12 noon or 12 noon to mid-night, with the result that the workers were required sometimes to take 2 hours of this so-called rest even before they started work or during the last two hours of the 12 hour shift or they were given the recess of 2 hours at any other time. The sole criterion for determining the so-called rest interval depended upon the exigencies and convenience of work. The union, has, therefore, submitted that the rest period was not really so and was only a device introduced by the Port Trust to avoid payment for the 2 hours and thus deprive the workmen of their legitimate dues. The union therefore, claimed in para 3 of its written statement that the entire period of the two shifts of 12 hours should be treated as time of duty and should be paid accordingly i.e. 8 hours constituting normal day's work and the 4 hours constituting over-time. It has in para 4 of its written statement stated that the variable nature of the recess leads to hardships, inconvenience and adverse effects on the health of the workmen; that the absence of a simultaneous period of recess for the whole staff and the short notice of hardly 24 hours of the exact time of recess cause further inconvenience and hardship and that, "these consequences of the system of work in force needed to be compensated" and it has claimed that, "an amount not less than the amount of wages paid for over-time work of 2 hours at double the ordinary rate of wages would constitute a fair and proper compensation". It has submitted that the nature of work done by the shore crew is such that the presence of at least half the staff is always necessary and as a result, the recess is given to the staff in two consecutive periods each of 2 hours.

8. The union in para 5 of its written statement has stated that the system prevalent today is discriminatory and inequitous. It has stated that the flotilla crew are the counter-parts to the shore crew, and are enjoying more favourable conditions of service. Inasmuch as though they also work in 12 hour shifts, they are paid over-time for 4 hours. The union has further urged that since 1960 the system of shift working in the Alexandra Dock was modified and the shore staff there are now being given 1 day's wages for 8 hours' work, over-time wages for 3 hours and 1 hour of variable recess. The union has alleged that when the staff at Alexandra Dock and the Prince's and Victoria Docks had agitated for the

system of giving 4 hours' over-time wages in the 12 hour shift as is given to the Flotilla staff, they were told by the Port Trust that it was intended by the Port Trust to extend the same system as was applicable to them to the other sections of the Port department. But realising the unjustice of the proposed extension, the Port Trust had continued the system of giving 4 hours' over-time wages to the Flotilla staff only. It has characterised the continuance of the existing system as not only unjust and unfair but discriminatory and one which has led to industrial unrest and is likely to adversely affect the industrial peace and good employer-employee relations. The union has further urged that instead of conceding the demand for 4 hours' over-time wages, the Bombay Port Trust had attempted to force the shore crew to accept the unjust system, by threatening to introduce 3 shifts of 8 hours each which would result in no over-time wages being earned by the shore crew. In para 7 of its written statement the union has stated that the work done by the shore staff is very responsible and one which requires alertness and diligence; that the work is of heavy manual nature and involves risk and that it cannot be termed intermittent and this was also the view of the Port Trust; that the Port Trust was now calling the work intermittent in order to avoid payment of legitimate dues to the shore crew. It is stated that over the years the work of the shore crew has increased considerably and that these factors should be taken into account when over-time is part of daily duty and proper and adequate compensation should be given to the workers. It has, therefore prayed that the system of work for the shore crew of Prince's and Victoria Docks needs to be so modified that 12 hours of duty should be divided into 8 hours of normal duty and 4 hours' over-time and that this should be done without adversely affecting the benefits and amenities which are at present available to them.

9. The Bombay Port Trust filed a rejoinder dated 6th November 1962 to the written statement of the union in which it has characterised the allegation of the union that the introduction of the period of rest in the shift system of work for the shore crew was a mere device to escape the payment of over-time wages as patently untenable and frivolous to need any comments. It has stated that having regard to the nature of the work of the shore crew viz. the berthing and unberthing of the vessels in the Prince's and Victoria Docks, which are tidal docks, the rest hours had inevitably to be different hours from day-to-day having regard to the time of the tides. In para 2 of its rejoinder the Bombay Port Trust has stated:—

"The employer states that the movement of vessels in and out of the entrance lock of the Docks would be feasible only at the time of the high tide with the result that such work could only be performed for not more than 3 hours during any shift. If the rest intervals were not to be variable, the same would on some days coincide with the high tide, with the result that no work in connection with the movement of vessels would be performed at all during the shift."

10. The Port Trust has stated that, "the average number of the hours of work done by the workmen in a shift inclusive of the time spent in miscellaneous work would even at a most liberal compilation be less than 5 hours, so the workmen have ample rest during the shift in addition to their variable recess hours". The Port Trust has, therefore, urged that the grievance made in the written statement of the union about the hard-ship resulting from the fact of the rest hours being variable is wholly unfounded; that the denial of the union in its statement that the work of the shore crew is intermittent is so evidently incorrect that it hardly calls for any refutation.

11. With regard to the union's plea that the Port Trust was discriminating between the crews of the Port Trust Flotilla and the shore crew, the Port Trust has denied the same and has stated that the conditions of work of the shore crew and of the crew of the Flotilla are by no means similar, quite apart from the difference in the conditions of work of the two categories of workers concerned. It has in that connection relied upon a statement contained in the union's letter addressed to the Port Trust dated 19th August 1961, where the union had expressed its willingness to agree to 3 hours' over-time and 1 hour variable recess which was introduced in the Alexandra Dock. It has annexed to its rejoinder the correspondence between the union and the Port Trust in that connection as Annexure "A" collectively.

12. With regard to the union's allegation that the Port Trust had tried to cow down the union by threatening to introduce a system of 3 shifts working with no over-time, the Port Trust has pointed out that at the meeting of the Trustees of the Port Trust held on 17th July 1956, when this resolution was passed.

Dr. Shanti Patel, the General Secretary of The union, in his capacity as the Trustee, had stated that he was in favour of the introduction of three shifts. The Port Trust has denied that merely because the workers are employed in a 12 hour shift of because the rest hours are variable, the workmen are entitled to more than 2 hours' over-time, quite irrespective of the hours of work done. It has, therefore, submitted that there was no case made out for any change in the existing system of work of the shore crew.

13. At the hearing the union led no oral evidence but the Port Trust examined Shri G. P. Potdar, a Time-keeper in the Port Department (EW1), Shri A. K. Menon, Port Inspector of the B.P.T. and a former berthing master in the Prince's and Victoria Docks and the Alexandra Docks (EW2) and Shri B. J. Bhandara, Dock Master, B.P.T. (EW3). Almost at the end of the hearing of this case the union by its application dated 26th June 1963 applied for permission to amend its written statement, to which the Bombay Port Trust filed its reply dated 9th July 1963. I shall deal with the application of the union for amending its written statement and the Port Trust's reply thereto in detail later in this award.

14. Before, I deal with the contentions of the parties I might recapitulate and state that the present position is that the shore workers in the Prince's and Victoria Docks work in a shift of 12 hours of which admittedly 2 hours are allowed as variable periods of rest and the remaining 10 hours, are deemed to be 8 hours' normal duty and 2 hours' overtime.

15. The main attack of Shri P. P. Khambatta, the learned counsel for the union has been directed against this period of variable hours of rest. The admitted position with regard to the variable period of rest is that a notice is put up each day stating what would be the hours of rest for the following day for the shore crew on the 1st and 2nd watches respectively and it is not denied that those hours of rest are observed. It is further admitted, as seen from the orders of the Dock Master filed by the union (Exhibit W-1 collectively), that on occasions the rest period commences at the beginning of the shift and sometimes it falls at the end of the shift. The argument urged by Shri Khambatta is that this variable rest period of 2 hours cannot really be called period of rest as sometimes it does not constitute a break in the working period of the shore crew. He has argued that a rest period cannot depend upon the employer's will and he has urged that the system of variable periods of rest had been evolved by the employers to avoid payment of overtime. He has also argued that irrespective of the actual hours of work put in in a shift, the Port Trust was liable to pay the shore crew for all the time during which they were in attendance during the shift irrespective of whether they work the whole-time during that shift or not. He has argued that as the shore crew are liable to be called out from their barracks even during the rest period they must be deemed to be on duty for all the 12 hours of the shift and would, therefore, be entitled to 8 hours' wages and 4 hours' overtime wages. In this connection, the union has referred to the Award of Shri M. R. Meher, Industrial Tribunal, Bombay, in Reference (IT-CG) No. 3 of 1954 between the Bombay Port Trust and their workmen, where on the question of the rest interval a reference was made to the practice that "where no fixed period of recess is prescribed, the rest period is treated as time spent on duty". But I find that in that Award on the question of rest interval the learned Tribunal gave no directions, but in the concluding portion of his Award observed as follows:

"Incidentally, it may be noted that the practice in the Indian Naval Dock-yard in which, wherever there are 3 shifts all the employees are not given a break precisely at the end of an odd period but at convenient times to be arranged (see exhibit XI). I do not consider it necessary to give any directions on the subject of rest intervals."

16. I am not impressed by this argument of Shri Khambatta, inasmuch as it is admitted and established from the exhibits filed by the union (see exhibit W-1 collectively) that though the hours of rest are variable in the sense that the same hours of rest are not prescribed each day for all the shore crew, who are divided into two batches, all the same the hours of rest are fixed for each day, notice of which is given to the shore crew of the respective batches, on the previous day and those hours of rest are adhered to in actual practice. Therefore, the position with regard to the shore crew of the Princess and Victoria Docks is that they are intimated in advance on the previous day what would be their hours of rest on the following day and they are not on duty during those hours. The fact that the two hours of rest fall sometimes at the beginning and sometimes before the end of the shift can, in my opinion, make no difference as in any case the workmen are paid for all the 10 hours during the shift of 12 hours during which they are required to remain present. It has to be remembered that the practice

of variable periods of rest has arisen out of the exigencies of work in the docks and it has been a practice which has been in force and accepted by the unions for a long number of years. I am of the opinion that the allegation of the union that this practice of giving variable hours of rest was introduced with a view to defeat the payments of over-time rates of wages for these 2 hours, is unjustified and not borne out by the attitude of the union in the past ever since this practice of variable rest interval was introduced. The material point in my opinion is that normally the shore crew are not called upon to work nor do they work for more than 10 hours in their shift and that they are in fact paid for those 10 hours, their wages being paid on the basis of 8 hours' normal work and 2 hours' overtime.

17. The union has next argued that as the work of the shore crew is not intermittent, they are entitled to be paid for all the 12 hours of their shift. In support, the union has relied upon a statement made in the note of the Chairman of the Bombay Port Trust, dated 16th June, 1953, in which he had stated that the shore crew were not intermittent workers. It is also conceded that the Government has not declared the work of the shore crew to be intermittent under section 13(3) of the Minimum Wages Act. As against this, Shri Nariman has referred to the statement made by the union concerned in its written statement submitted in November, 1954, in an industrial dispute before Shri Lokur when the union had stated that "the men (shore crew) also preferred to make no noise about any fixed period of recess in view of the fact that the nature of their work was somewhat light and it was intermittent." In the strict legal sense of the term the work of the shore crew cannot be termed as intermittent, as it is conceded that it has not been declared intermittent by Government under the provisions of the Minimum Wages Act, but there is not the least doubt that though the work of the shore crew is not intermittent in the sense that they do not work in broken shifts, there is enough evidence on the record to establish the fact that as the Prince's and Victoria Docks are tidal docks which can be worked in each shift only for $3\frac{1}{2}$ hours during the high tide period—the shore crew are not engaged—even taking into account the miscellaneous work and other duties performed by them—at work during all the 10 hours, if we exclude the rest period of 2 hours from the shift of 12 hours. It is in this sense that Shri Nariman, the learned Legal Adviser of the Port has stated that the work of the shore crew is intermittent.

18. It is, however, admitted that the Minimum Wages Act, 1948 (Act XI of 1948) applies to this establishment and this is a scheduled establishment under that Act. Shri Khambatta, for the union in support of the union's claim for over-time wages for 4 hours, has relied upon the provisions of section 13 of the Minimum Wages Act and Rule 25 thereunder. Now, section 13 provides for fixing the hours for a normal working day, etc. Section 13(1) is as follows:—

- (1) In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may—
 - (a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;
 - (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;
 - (c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

Shri Nariman has drawn my attention to Section 4 of the Minimum Wages (Maharashtra Amendment) Act, 1962—(Maharashtra Act III of 1963)—by which sub-section (1) of Section 13 of the Minimum Wages Act (Act XI of 1948) has been amended by the insertion of the following clause (aa)—

- (aa) fix the number of hours of work which shall constitute a normal working week."

Sub-section (2) of section 13 provides that the provisions of sub-section (1) shall, in relation to the classes of employees enumerated therein, apply only to such extent and subject to such conditions as may be prescribed and sub-clause (c) thereof refers to employees whose employment is essentially intermittent. Sub-section (3) of section 13 provides that for the purposes of clause (c) of sub-section (2) the employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee or if there be no daily hour of duty as such for the employee, the hours of duty, normally include periods of inaction during

which the employee may be on duty is not called upon to display either physical activity or sustained attention.

Now, rule 25 of The Minimum Wages (Central) Rules, 1950 provides for payment of extra wages for over-time and sub-rule (1) of rule 25 is as follows:—

Rule 25. Extra wages for over-time—

- (1) when a worker works in an employment for more than nine hours on any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages.
- (a) in the case of employment in Agriculture, at one and a half time the ordinary rate of wages;
- (b) in the case of any other scheduled employment, at double the ordinary rate of wages.

19. I may pause here and state that it is admitted that this is a scheduled employment. Shri Khambatta has argued that there can be no contracting out of Rule 25 and that the Resolution of the Trustees of the Bombay Port Trust, dated 31st July, 1956, being Trustees Resolution No. 681 is a contracting out by the parties from the provisions of Rule 25.

20. Shri Khambatta has also referred to Rule 24 of the Central Rules which provides for the number of hours of work which shall constitute a normal working day. Sub-rule (1) of Rule 24 provides that the number of hours which shall constitute a normal working day shall be—

- (a) in the case of an adult, 9 hours.
- (b) in the case of a child, 4½ hours.

Sub-section (2) provides that the working day of an adult worker shall be so arranged that inclusive of the intervals for rest, if any, it shall not spread over more than twelve hours on any day.

21. Shri Nariman, has rightly pointed out that Rule 24, does not provide for a rest period after five working hours. It is clear from the provisions of Rule 24(2) that the spread-over of a working day, inclusive of the hours of rest, should not exceed 12 hours. I, therefore, agree with Shri Nariman that the Port Trust is complying with the provisions of Rule 24(2) inasmuch as the existing spreadover is 12 hours inclusive of the period of rest.

21A. In my view, Shri Nariman is right when he contends that overtime is not dependent upon the spread-over of the shift, but upon the hours of work done. He has contended that the relevant section is not section 13 of the Minimum Wage Act, as that section does not deal with overtime payments but deals with quite a different topic viz. for fixing hours for normal working day, etc. and that, therefore, the relevant section for purposes of overtime payment is section 14 of the Minimum Wages Act. He has, in my opinion, rightly argued that the object of section 13 is to limit the spread-over of the working day and that section 13 and rule 24(2) relied upon by Shri Khambatta, learned Counsel for the Union, do not govern the subject of overtime payment. Section 14 of the Minimum Wages Act, on which Shri Nariman relies deals with payment of overtime wages and that section is as follows:—

- (1) Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

22. Shri Nariman's emphasis has been that unless the workman actually works in excess of the number of hours constituting a normal working day or under the Amendment to Section 13 the hours of work which shall constitute a normal working week, he shall not be entitled to payment of overtime. He has argued that the shore crew of the Prince's and Victoria Docks do not in fact work for more than 5½ hours a day and in support of this statement he has relied upon the evidence of the witnesses of the Bombay Port Trust, to which I shall presently refer. He has, however, argued that in any case the shore crew in the Prince's and Victoria Docks do not actually work for more than their duty hours of 10 hours in the shift, that even if the contentions of Shri Khambatta were to be accepted that the period the workmen has worked is to be interpreted as the

period during which he has been on attendance, even then the Port Trust is paying its shore crew 10 hours' wages made up of 8 hours normal duty and 2 hours' overtime. I am inclined to agree with this contention of Shri Nariman. The union has not been able to give any satisfactory reply to this contention. The union can succeed in its claim for 4 hours' overtime payment only if the rest period of two hours provided for in each shift, is also to be treated as period during which the workmen has worked. I am satisfied that this rest period of 2 hours—though variable—cannot be included in the period of work. The mere fact that the rest period is at times, because of exigencies of work, arising out of the different hours of the high tide fixed at the beginning of the shift or at the end of it, would make no difference, as even so the shore crew are not required to be on duty for more than 10 hours for which they are paid on the basis of 8 hours' normal duty and 2 hours' overtime. It has to be remembered that the recess hours have necessarily to be variable, because of the changing hours of the high tide, during which only the movement of vessels in and out of the entrance lock of the Prince's and Victoria Docks is feasible and that such work could be performed for only three and a half hours in a shift.

23 I am, therefore, on the legal contention urged on behalf of the union, not satisfied that the shore crew, under the provisions of the Minimum Wages Act and its Rules are entitled to payment of 4 hours' overtime wages. It is significant that all these years since this practice has been in force the union never invoked the provisions of the Minimum Wages Act or the Payment of Wages Act in support of its claim for 4 hours' overtime payment. In my opinion, there is considerable substance in Shri Nariman's contention that the union was changing the basis of the dispute under reference by claiming 4 hours' overtime under the Minimum Wages Act because the dispute as agreed to by the union and the Bombay Port Trust and as stated in their joint application to Government for reference to the Tribunal, is whether the present system of work of the shore crew of the Prince's and Victoria Docks needs any change. It is also significant that in paras 4, 7 and 8 of its written statement of claim the union has urged that the shore crew are entitled to payment of 4 hours' overtime on the ground that these workmen are entitled to be compensated for the hardships and the inconvenience caused to them by their recess hours being variable. Shri Nariman is right when he argued that this claim for compensation was inconsistent with a claim for overtime wages under the Minimum Wages Act. In my opinion the submissions made on behalf of the Bombay Port Trust in its reply statement dated 9th July, 1963, to the union's application for amendment to its written statement, dated 26th October, 1962, has substance but as Shri Nariman has very fairly not objected to the application for amendment being allowed, I have dealt with the submissions of the union on the basis of the Minimum Wages Act.

24 I now turn to the discussion of the demand on its merits. In my opinion, the onus was on the union to establish that the existing system of work of the shore crew of the Prince's and Victoria Docks needed the modification, which it seeks. As I have stated earlier, the union has surprisingly led no oral evidence on this point and I think that Shri Nariman was perfectly justified in making a grievance on that score. The union in its written statement, as I have stated earlier, has made vague references to the difficult and responsible nature of the work of the shore crew but it has not led any evidence to show that the shore crew in the Prince's and Victoria Docks are entitled on that account to overtime payment for two additional hours, as compensation. The union had led no evidence to show what time the shore crew were spending on the miscellaneous work, inter-berth shifting and other work not connected with the berthing and unberthing of the vessels in the Prince's and Victoria Docks, such as work done by them in the dry docks etc. As I have indicated earlier the two shift system of working in the Prince's and Victoria Docks was established in 1954. As the Port Trust has pointed out, the union concerned, in its written statement before Shri Lokur had stated that the work of the shore crew was so little that they could not make any noise about the variable recess hours. In para 21 of its written statement, the Bombay Port Trust has clearly stated that no development has taken place since the introduction of the two shift working to justify the demand of the union for overtime for 4 hours. It was, therefore, for the union to establish what change had taken place to justify an increase in overtime wages and as the union has failed to lead any evidence in support thereof, it must be held that it has failed to discharge that onus. Shri Khambatta, the learned counsel for the Union, has tried to meet this contention of Shri Nariman by stating that the claim for 4 hours' overtime was raised by the union both for the shore crew of the Alexandra Dock and the Prince's and Victoria Docks by its letter, dated 10th June, 1960 (Ex W 2) but that under the agreement, dated 3rd October, 1961 (Ex W-4), the overtime in the Alexandra Dock was increased from two hours to

three hours by the recess being reduced from two hours to one hour and it was at that time agreed to refer the issue regarding variable hours of recess and payment for all the twelve hours in each shift for the shore crew of the Prince's and Victoria Docks to the Industrial Tribunal by a joint application. He has argued that the duties prescribed for the shore crew both in the Alexandra and the Prince's and Victoria Docks were the same and he has in this connection referred to the Annexure at page 16 of the Bombay Port Trust's written statement where the duties of the shore crew of the Prince's and Victoria Docks on the introduction of the two shift system have been stated (see Trustees Resolution No. 951, dated 15th December, 1953). Shri Khambatta has argued that having indicated that the duties of the shore crew at the Alexandra Dock and the Prince's and Victoria Docks were the same, it is not for the union to prove that the present work in the Prince's and Victoria Docks has increased, but that the onus was on the Bombay Port Trust to establish that the work for the shore crew in the Alexandra Dock is more. Shri Khambatta further stated that as it is admitted that prior to the agreement, dated 3rd October, 1961, the hours of work for the shore crew both in the Alexandra Dock and the Prince's and Victoria Docks were the same and that thereafter the Bombay Port Trust had granted one hours' addition overtime to the shore crew of the Alexandra Docks, it was for the Bombay Port Trust to prove that this increase was justified in the case of the shore crew of the Alexandra Docks and not for the shore crew of the Prince's and Victoria Docks. He has also relied on the statement at pages 2 and 3 of the Bombay Port Trust's written statement that for half the year and even more the Alexandra Dock is subject to the vagaries of the weather and he has argued that this shows that there is not much shipping in the Alexandra Dock during those months.

25. I am not impressed by the position taken up by Shri Khambatta for explaining away the union's failure to lead any evidence in support of its claim that instead of two hours' overtime as at present, the shore crew of the Prince's and Victoria Docks were entitled to 4 hours' overtime on the basis of the work done by them.

26. With regard to the increase in the overtime wages to the shore crew of the Alexandra Docks, the Bombay Port Trust, under the agreement, dated 3rd October, 1961, agreed to pay the shore crew of the Alexandra Dock overtime on the basis of 3 hours and reduced the recess from 2 hours to 1 hour and made it variable for special reasons. After the two shift working was introduced in the Alexandra Docks in 1953, as stated earlier, in 1956, the Bombay Port Trust General Workers' Union which then represented the shore crew employed at the Alexandra and the Prince's and Victoria Docks had demanded that the workman should be granted a fixed recess of 2 hours instead of variable recesses as was then being granted. As already stated earlier, the Trustees of Bombay Port Trust thought that the demand for fixed recesses was an indirect way of demanding 4 hours' overtime which was considered unreasonable and rejected the same as such at their meeting held on 17th July, 1956 (see annexure B—Trustees Resolution No. 637 to the B.P.T.'s written statement). The Port Trust also informed the union that in case the workmen persisted in the demand a system of 3 shift working, with no overtime, would be introduced. It was upon this that the union informed the Administration that it had held a general meeting of the shore crew of the Alexandra and the Prince's and Victoria Docks at which it had been decided to continue the system of two shifts working with variable recess of two hours. The union requested that the recess period should as far as possible be during the middle of the shift. The union was then informed that at the Prince's and Victoria Docks, the rest period would as far as possible be arranged so that it fell about the middle of the duty hours, but at the Alexandra Dock it was decided that the rest period would as far as possible be fixed as under:—

A.M. Watch

Crew working on the East Side—0000—0200 hours

Crew working on the West Side—0200—0400 hours

P.M. Watch

Crew working on the East Side—2000—2200 hours

Crew working on the West Side—2200—2400 hours

This arrangement was sanctioned by the Trustees Resolution No. 681, dated 31st July, 1956. Under this arrangement, half of the crew at the Alexandra Dock had their recess at a time, so that the other half was available for any emergent work at Ballard Pier or at the Harbour Wall berths. During the period from 8 p.m. to 4 a.m. when some of the workmen would be having their rest interval, no ship could be brought into or taken out of the Alexandra Dock through the Lock as a

full crew would be required for this operation, one crew working on the East-side and the other working on the West side of the Lock. Normally, and except during the monsoon, operational requirements at the Alexandra Dock, which has a system of lock gates designed to regulate the depth of water in the Docks at all times, would not ordinarily call for any variation in the recess hours and in actual practice the recess had been given at fixed hours as stated above. However, shipping movements in the Alexandra Dock during the monsoon season viz. July to September and during period of cyclonic disturbances which generally occur before or after the monsoon i.e. April-May and October, November, are subject to certain restrictions imposed by the closing of the storm gates to protect the lock gates from damage by the harbour swell. The storm gates are usually closed on such occasions at half flood and opened again one or two hours after high water according to the swell prevailing. During the period of closure of the storm gates which lasts for about 4 hours twice a day during rough weather, as mentioned above, the Alexandra Dock used to be closed to shipping. Fixed recess hours for the shore crews arranged in the manner stated above, during days when the storm gates have to be closed, resulted in shipping being denied berthing facilities for the period from 8 P.M. to 4 A.M. and also for the period of the closure of the lock gates, thus aggregating from a minimum of 8 hours to a maximum of 16 hours a day. The Port Trust had a scheme for modernisation of the Docks under which the Alexandra Dock could have a larger number of berths than at present. In order to enable the Alexandra Dock to handle the maximum possible number of ships the Port Trust considering it necessary that the shore crew should work in a system of variable recess with the recess hours coinciding with the period of closure of the storm gates which would vary from day to day according to the tides. Even though under the conditions of service of the shore crew at Alexandra Dock the hours of recess were to be variable and the workmen in fact had agreed that the time at which the 2 hours of recess was to be given should be variable, the B.P.T. gave the Bombay Port Trust Employees' Union a notice under section 9A of the Industrial Disputes Act of change in service conditions for introducing a system of recess at variable hours, since in actual practice the workmen as stated above were being given their recess at fixed hours. A copy of notice of change under section 9A of the Industrial Disputes Act, is filed as exhibit D to the B.P.T.'s written statement and the same has not been denied by the union. The notice of change after stating the recess hours which were prevailing in the Alexandra Dock stated that it was now proposed that in the interests of shipping the shore crew of the Alexandra Dock should be granted variable recess hours to coincide with the period during which the storm gates remain closed during the monsoon. The union by its letter, dated 13th December, 1961, opposed the proposed change from the practice of a fixed system of recess to a variable system of recess. Thereafter, the matter was discussed by the Chairman of the Port Trust with the General Secretary of the Union, as a result of which certain proposals for a settlement of the dispute were made by the Port Trust in their letter to the union, dated 24th March, 1961 (see annexure E to the B.P.T.'s written statement). According to the Bombay Port Trust, prior to taking a final decision in the matter, the Employers caused certain studies to be made of the active periods of employment of the shore crew in all the Docks. These showed that on the basis of quantum of work there was no case for the grant of any further overtime to the shore crew. However, these studies also showed that of the three units of the shore crews, viz. Alexandra Dock, Prince's and Victoria Docks and Butcher Island, the crew of the Alexandra Dock put in more work than the shore crew in the other docks and it was, therefore, considered that their case merited some consideration in the context of the proposals for stepping up the movement capacity in the Alexandra Dock. The B.P.T. has annexed to its written statement, a statement marked annexure E-1 which is a comparative statement showing the quantum of work put in by the shore crew in the various Docks during the period from January to June 1960. But this statement was not proved at the hearing. Ultimately, the Port Trust by their Resolution No. 604, dated 16th August, 1961, decided that the shore crew at the Alexandra Dock should work in two shifts of 12 hours each, consisting of 8 hours' normal duty, 3 hours' overtime and one hour variable recess. Its Resolution further decided that the necessity for effecting a change in the system of working at Alexandra Dock with a view to provide greater facilities to shipping, did not hold good for the working at the Prince's and Victoria Docks and at Butcher Island (Trustees' Resolution No. 604, dated 16th August, 1961—Annexure F to the B.P.T.'s written statement).

27. To sum up, the above history of the hours of recess in the Alexandra Dock and the Prince's and Victoria Docks shows that because of the special circumstances prevailing in the Alexandra Dock, viz., that whilst the hours of recess

were in practice fixed, the Port Trust wanted to make hours of recess variable in the interest of greater movement of ships in the Alexandra Dock. The Trustees, therefore, decided that the shore crew of the Alexandra Dock will be required to work in 2 shifts of 12 hours each, consisting of 8 hours' normal duty, 3 hours' overtime and one hour variable recess, the recess hours to be fixed from day-to-day with previous notice and the arrangement to remain in force for a period of about 3 years. By that Resolution it was also decided that the demand for additional overtime for the shore crew in the Prince's and Victoria Docks will be rejected but as the union persisted in its demand and the Administration was prepared to make a joint application for settlement by adjudication. This suggestion was embodied in the Report of the Finance and Joint Committee held on 8th August, 1961, where it was also recorded that the proposal was confined to the shore crew of the Alexandra Dock and was justified only as a step towards increasing output and involving no concession whatsoever to the demand of the labour unions that the work is not intermittent. It also recorded that there was no need for making any change in the system of work in the Prince's and Victoria Docks and Butcher Island where the conditions are different.

28. After hearing the submissions of the parties and considering the documentary and oral evidence on the record, I am satisfied that the conditions of work in the Alexandra Dock are different from the conditions in the Prince's and Victoria Docks and the fact that the Port Trust granted the shore crew of the Alexandra Dock 8 hours' normal duty, 3 hours' overtime and one hour's variable recess would not by itself justify the demand to grant the same concession to the workers of the Prince's and Victoria Docks much less to their being granted 4 hours' overtime.

29. Before me it was also urged that the work of the shore crew was not intermittent, but I am satisfied from the evidence on record that the work of the shore crew is not continuous during the 10 hours they are on duty. The Bombay Port Trust General Workers' Union in its written statement in the arbitration proceedings before Shri Lokur held in 1954, had stated that the work of the shore crew was light and intermittent. The Government of India in the Resolution dated 20th July, 1958, on the Chowdhry Report had also taken the view that the work of these categories is really intermittent and there has been no new development which can be said to have altered the general validity of these past decisions. If there has been a change, then the onus was on the Union to establish it to justify the change in the existing system of work which it has claimed. In my opinion, the most important single factor which differentiates the working of the shore crew in the Alexandra Dock and the crew in the Prince's and Victoria Docks is the admitted fact that the Prince's and Victoria Docks are tidal docks where the shore crew can do the work of leading the vessels into the dock and berthing and unberthing them, for only three to three and a half hours in each shift, i.e. during the period of the high tide. In the Alexandra Dock on the other hand because of the arrangement of lock gates it is possible to work the docks for all the 12 hours in each shift. Shri A. K. Menon, Port Inspector (E. W-2) in his evidence has stated as follows:-

"In the Prince's and Victoria Docks, the ships can be berthed and unberthed only during the time of high tide. The duration of high tide in a period of 12 hours would be about 3 to 3½ hours. The Alexandra Dock is not a tidal dock and, therefore, berthing and unberthing of ships can be done at any time of the night or day."

30. There was no cross-examination of this witness on this point. Therefore, it is established that the main duty of the shore crew of the Prince's and Victoria Docks of berthing and unberthing vessels does not and cannot occupy them for more than 3½ hours to 4 hours in each shift. The case of the union on the other hand is that besides the work of berthing and unberthing of vessels, the shore crew have to do miscellaneous work, the work of inter-berth shifting of vessels and work in the dry docks. All these are among the nine duties of shore crew specified in the minutes of the meeting of the Trustees of the Port held on 30th June 1963. The case of the B.P.T. is that all this work including the work of berthing and unberthing of vessels, does not occupy the shore crew for more than 5½ hours in each shift. That was the case of the Bombay Port Trust in its written statement and in support of it it has led the evidence of 2 officers who have given details of the work done by the shore crew in the Alexandra Dock and the Prince's and Victoria Docks. The union, on the other hand, has led no evidence whatsoever to show what additional hours in each shift, besides the three to three and a half hours, when they attend to the work of berthing and unberthing vessels, during high tide, the shore crew are engaged in doing the miscellaneous and other work. In my opinion, the absence

of any evidence on this point has been fatal to the case of the union. On the contrary, there is sufficient evidence, both oral and documentary on record on behalf of the Port Trust, to show that the shore crew of the Prince's and Victoria Docks, are not engaged in work for more than 5½ hours to 6 hours in each shift. I am satisfied on the evidence that the miscellaneous work and the work of inter-berth shifting does not engage the shore crew in the Prince's and Victoria Docks for more than 1½ hours to 2 hours on an average in each shift. I have seen the nature of most of the miscellaneous work that shore crew are required to do when I went for inspection to the Prince's and Victoria Docks accompanied by the representatives of both the parties. The cumulative effect of the evidence of Shri A. K. Menon, Port Inspector who has had considerable experience of work as Berthing Master—he having worked as Berthing Master for several years in the Alexandra Dock—and from the evidence of Shri Bhandara who was on the dates he gave evidence before me on 12th December 1962 and 13th December 1962, a Junior Dock Master at the Prince's and Victoria Docks since last 40 days, is that the shore crew in the Prince's and Victoria Docks, because of those Docks being tidal docks, have less hours of actual duty compared to the shore crew of the Alexandra Dock. I am satisfied that as by and large smaller vessels are berthed in the Prince's and Victoria Docks and larger vessels are berthed in the Alexandra Dock, the work of shore crew of the Alexandra Dock occupies them more time than the work done by the shore crew of the Prince's and Victoria Docks. Besides the construction of the Alexandra Docks because of the locking arrangement is different, making shipping possible both during the day and the night, thus making the work of the shore crew there more strenuous. With regard to the miscellaneous work done by the shore crew there has been no cross-examination of the witnesses of the Port Trust on behalf of the union. I may here mention that with regard to the work done in the dry Docks the only work they have to do in the dry docks appears to be to lift the calsons up and that this work is done in the Prince's and Victoria Docks by the shore crew. There has been, no doubt, minor discrepancies in the evidence of the two officers of the Port Trust but they have not materially affected the correctness of the statement made by them.

31. It was next argued on behalf of the union that this demand is justified because the Flotilla crew of the Port Trust get 4 hours' over-time. But there has been no evidence led by the union as to the nature of the duties of the Flotilla crew. It, however, appears from the proceedings of the meeting of the Trustees of the Port of Bombay held on 17th July 1956 (Exhibit B) to the Bombay Port Trust's written statement that there the system of variable recess had not been put into effect and therefore, 4 hours' fixed over-time was still being paid and that the demand then made by the shore crew for fixed recess hours was deemed to be an indirect method for getting 4 hours' over-time.

32. In my Award dated 28th September 1962 in Ref. No. 5 of 1962 [See Govt. of India Gazette Part II, Sec. 3(ii), dated 20th October 1962, pp. 3301 to 3312] in the industrial dispute with regard to the shore workers of the Butcher Islands, I had rejected the demand for additional over-time for the shore crew, as after an inspection of their work at the Butcher Island and on consideration of the hours of work put in by them in each shift, I was satisfied that the shore crew of the Butcher Island had more hours of leisure in each shift than the hours they worked. Shri Khambatta for the union has argued that if I rejected the present demand of the shore crew of the Prince's and Victoria Docks, I would be equating their work with the work of the shore clerk at Butcher Island. But that is not the inference to be drawn. The present claim is on the basis of comparison with the shore crew of the Alexandra Dock and as I have stated earlier I am more than satisfied that the shore crew of the Alexandra Dock had been granted an increase in their over-time wages by one hour because of the special circumstances of the work in the Alexandra docks. I am also satisfied that the shore crew of the Prince's and Victoria Docks do not actually have to do the same hours of work in a shift and their hours of work are less than that of the shore crew of the Alexandra Dock. This is mainly due to the fact that the Prince's and Victoria Docks are tidal docks and that the change in the system of work in the Alexandra Dock was due to circumstances other than those applicable to the shore crew of the Prince's and Victoria Docks.

33. In the result I hold that the union has not been able to establish that the existing system of work for the shore crew of the Prince's and Victoria Docks, under which each shift consists of 8 hours' normal duty; 2 hours' variable recess and 2 hours' over-time, needs any modification and I award accordingly.

34. No order as to costs.

(Sd.) SALIM M. MERCHANT,

Presiding Officer,

Central Government Industrial Tribunal,
Bombay.

[No. 28/58/62/LRIV.]

New Delhi, the 1st October 1963

S.O. 2905.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Labour Court, Madras, in the matter of a complaint under section 33A of the said Act from Shri R. Sridharan of the Bank of Baroda, which was received by the Central Government on the 13th September, 1963.

BEFORE THE CENTRAL GOVERNMENT LABOUR COURT, MADRAS

Wednesday, the 4th day of September 1963

PRESENT:

Sri M. S. Abdul Azeez, B.A., LL.B., Bar-at-Law:—*Presiding Officer*

Application under section 33-A of the Industrial Disputes Act, 1947 in Reference No. 1 of 1960 (National Industrial Tribunal, Bank Disputes Bombay).

Sri R. Sridharan, represented by the Bank of Baroda Employees' Union, 233, Angappa Naick St. Madras-1.—*Complainant.*

Vs.

The Bank of Baroda Ltd. by its General Manager, No. 1/12, Appolo St., Fort, Bombay.—*Opposite Party.*

In the matter of Complaint No. 30 of 1962 in Ref. No. 1 of 1960, pending before the National Industrial Tribunal, (Bank Disputes), Bombay-1 renumbered as Complaint No. 3 of 1962 of the Central Government Labour Court, Madras.

AWARD

This is a complaint under section 33-A of the Industrial Disputes Act by an employee of the respondent the Bank of Baroda Ltd., complaining of contravention by the management of the provisions of section 33 as the respondent has all of a sudden imposed a cut of Rs. 35.00 in the salary and emoluments payable to him for the month of June 1962 and has thus altered the conditions of service applicable to him to his prejudice during the pendency of proceedings before the National Industrial Tribunal, Bombay. This complaint was filed before the National Industrial Tribunal (Bank Disputes) at Bombay and was then transferred to the file of this Court. The parties have since settled the matter and filed into Court a joint memorandum of settlement, the terms whereof are reproduced as annexure hereto. In view of this settlement the complaint is recorded as settled and dismissed. There will be an award accordingly.

Dated at Madras, this the 4th day of September, 1963.

(Sd.) M. S. ABDUL AZEEZ,

Presiding Officer,
Central Government Labour Court,
Madras.

ANNEXURE

Terms of Settlement

The opposite party having paid the complainant Rs. 40/- p.m. with effect from the 1st January 1962 as per the directions of the Award dated the 7th June 1962 of the National Industrial Tribunal (Bank Disputes) otherwise known as the Desai Award, in para 5.282, item 19, for the work of signing D.D.s, T.T.s., etc., the matter is settled and the Honourable Court be pleased to make an award accordingly.

Dated at Madras this the 4th day of September, 1963.

Sd/- R. SRIDHARAN,
Complainant.

For and on behalf of the Bank of Baroda Ltd.,

Sd/-
Regional Manager.

Sd/-
The 4th Sept. 1963,
Advocate for management.

(Sd.) M. S. ABDUL AZEEZ,
Presiding Officer,
Central Government Labour Court,
Madras.

Sd/-
The 4th Sept. 1963,
Counsel for complainant.

New Delhi, the 3rd October 1963

S.O. 2906.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Khas Karanpura Colliery and their workmen, which was received by the Central Government on the 27th September, 1963.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

In the matter of a Reference under Section 10(1)(d) of Industrial Disputes Act, 1947, (XIV of 47).

REFERENCE NO. 14 OR 1962

PARTIES:

Employers in relation to Khas Karanpura Colliery

AND

Their workmen.

PRESENT:

Sri Raj Kishore Prasad, M.A., B.L.—*Presiding Officer.*

APPEARANCES:

For the Employers.—Sri S. S. Mukherjee, Advocate, with Shri J. D. Jindal, Welfare Officer.

For the Workmen.—Sri S. K. Mukherjee, Advocate, with Sri D. D. Sinha.
Camp: Ranchi, dated the 13th September, 1963

STATE: Bihar.

INDUSTRY: Coal.

AWARD

The Ministry of Labour and Employment, Government of India, by its Order No. 2/32/62-LR. II, dated the 10th May, 1962, referred, under Section 10(1)(d) of the Industrial Disputes Act, 1947, (14 of 1947), an industrial dispute existing between the employers in relation to Khas Karanpura Colliery, and, their workmen in respect of the matter specified below for adjudication to this Tribunal:

SCHEDULE

- "(1) Whether the transfer of Sarvashri Raghunath Prasad, Michael, and 47 other Quarry Pick Miners and Loaders as Overburden Removers on the alleged ground that they had been giving less loads of coal in tubs is justified.
- (2) If not, to what relief are the workmen entitled and from what date?"
- 2. The employers filed their written statement on 30th May, 1962. Their case was that Khas Karanpura Colliery Workers' Union failing to secure its recognition from the management held a general meeting on 10th December, 1961, in which they listed several baseless demands including the threat of 'demonstration' and 'Satyagraha', and the employers understood that at the said meeting the Union representative also exhorted the Quarry Miners to under load tubs; that since after the above general meeting of 10th December, 1961, some of the quarry miners, including the workmen concerned, deliberately started giving under-loads, the size of the tubs used by the Colliery being 36 c.ft. and less; that on 12th December, 1961, the employers gave a notice to the quarry miners asking them to give usual and normal loads in tubs and on failure warned them that there would be proportionate deduction of wages and disciplinary action; that out of a total strength of 400 loaders and miners in the colliery only 50 persons persisted in under-loading the tubs, notwithstanding the notice and warning given to them; that therefore, the management decided to transfer the workmen concerned to the work of Overburden Removers, where the chance of such dispute would be negligible, as their work over a certain period in the Overburden could be measured at any time; that the said transfer was made by giving 21 days notice to become effective from 30th March, 1961; that the miners and loaders concerning the present dispute had previous experience of working in the Overburden and their present earnings compare favourably with their previous earnings as miners and loaders; that, therefore, the workmen concerned have no grievance and as such their transfers are bona fide and they are not entitled to any relief.

3. Khas Karanpura Colliery Workers' Union, representing the workmen concerned, filed a written statement on their behalf on 2nd June, 1962, and their case was that their transfers were not *bona fide* and the alleged grounds of transfers were totally false and baseless; that the Colliery has tubs of larger size than 36 c.ft. and the management had been insisting that the miners must load the tubs quite above water level of the tubs, and, they must give the coal of much higher capacity than even the size of the tub, which is said to be larger than 36 c.ft. in size, but for all such huge load over tubs, however, the management had been paying at the rate of 36 cft and if the coal was not heaped up on the tubs, the management used to resort to arbitrarily cut the tubs loaded by the miners and pay them less, by giving 1 to ½ tub; and as such, the management was making an unlawful gain at the cost of the miners; that the workmen concerned protested against the unlawful deduction in their wages by the management, and, therefore, these workers concerned had been transferred to Overburden work, only by way of victimisation, for demanding the lawful rights and benefits, and for protesting against the illegal action of the management; that no charge sheet was served on them and they had been demoted without any charge sheet and any enquiry; that, therefore, the 43 miners whose names are mentioned in Annexure 'A', marked Exhibit W. 13, should be reinstated as Quarry Pick Miners and Loaders in the quarry, where they had been working prior to their transfer and granted difference in their wages, which they had been actually earning as Overburden Removers with effect from 13th March, 1962 and their normal earnings of category as Quarry Pick Miners and Loaders from Overburden Removers should be restored.

4. Shri S. S. Mukherjee, Advocate, with Sri J. D. Jindal, Labour Welfare Officer of the management, represented the management. The management, in support of its case, examined two witnesses, namely Shri Sitaram Yadav, office peon and Shri Nirmal Chatterjee, an employee, of the Colliery and also filed documents, which, with mutual consent, were marked as Exhibits M. to M.16.

5. Shri S. K. Mukherjee, Advocate, with Shri P. D. Sinha, General Secretary of the Union, represented the workmen concerned. The workmen, in support of their case, examined Shri Raghunath Prasad, W.W. 1—one of the workmen and Shri P. R. Sarkar, W.W. 2, Office Secretary of the Union, and also filed documents, which also, with mutual consent, were marked Exhibits W. to W. 13.

6. The reference is in respect of Shri Raghunath Prasad and Shri Michael and 47 others, in other words, 49 Quarry Pick Miners and Loaders are concerned in the dispute but the names of 47 other workers are not given in the reference itself. The workmen, however, along with their written statement, filed a list of 48 Quarry Pick Miners and Loaders, who are concerned in the dispute, which is Annexure 'A' to their written statement, and which has been marked Exhibit W.13. In this list, Exhibit W.13, the name of Bhandari is left out and, therefore, only 48 remain. It was, however conceded, as alleged by the management, on behalf of the workmen, that four workmen, namely, No. 3 Michael, No. 4 Agtha, No. 7 Zakarius and No. 8 Medium II, as given in Exhibit W.13, are working in coal, i.e., are working in their previous jobs, and, therefore, they are no longer concerned in the dispute. It was further admitted, on behalf of the workmen, as alleged by the management, that one workman No. 45, Tehri has lost her job due to overstaying her leave and she is no longer interested in this dispute. This position is confirmed also by W.W. 1—Shri Raghunath Prasad. Taking out five more, we are, therefore, left with 43, according to the workmen, who are concerned in the present dispute. It may be mentioned that according to the management, four workers, namely, No. 5 Govind, No. 6 Durajmati, No. 14 Ramanand and No. 15 Teharin, as mentioned in the list, Exhibit W. 13, had resigned and left, and, therefore, they were also not interested in the dispute, but this fact is not admitted on behalf of the workmen, and, therefore, we are left with 43 workmen who are concerned in the present dispute and whose cases have to be considered and to whom the award, which I would presently make, will apply.

7. It is further admitted by both sides that these workmen concerned were working as Quarry Pick Miners and Loaders in Argala Quarry No. 1 and as such they came under Category V according to Coal Award and that they were skilled workers but overburden workers were unskilled workers and they came under Category I. It was also admitted that the wages of Category V workers are more than those of Category I workers.

8. Shri S. S. Mukherjee, Advocate, on behalf of the management, contended that no charge sheet was served on the workmen concerned, because the management had no intention to dismiss them, as it will appear from Exhibit M; that the transfer of the workmen concerned was covered by Section 9A of the Industrial

Disputes Act, 1947, as the said transfer affected conditions of their services, and, therefore, a notice under Section 9A dated 17th February, 1962, Exhibit W, Exhibit M. 1, was given to the workmen concerned to be effective from 13th March, 1962; that the transfer of the workmen concerned was not covered by Standing Order No. 26, Exhibit W.10, as that Standing Order applies when the transfer does not cause any prejudice to the wages of the workmen and to other conditions of their services; that the earnings as Overburden Removers were not less than those of Quarry Pick Miners and Loaders as it will appear from Form 3 register of wages Exhibit M.15—M.16 in respect of other Overburden Removers; that there was no evidence that Reference No. 16 of 1961 was pending at the time, when the transfer was made, and that during the pendency of the said reference, the transfer was made; that, therefore, the case hinges on the notice under Section 9A of the Act, which has been denied by the workmen concerned; that the fact that the workmen were giving less loading in tubs is proved by Exhibit M.9, which is a letter written by the Conciliation Officer (Central), Hazaribagh, to the Regional Labour Commissioner (Central), Dhanbad, regarding the proposed transfer of these 49 Quarry Pick Miners and Loaders as Overburden Removers with effect from 13th March, 1962; that the action of the management was *bona fide* in the interest of the workmen concerned and not by way of victimisation and as such the workmen concerned are not entitled to any relief and the reference should be answered in favour of the management.

9. Shri S. K. Mukherjee, Advocate, on behalf of the workmen contended, in reply, that Standing Order 20(7), Exhibit W.10, applies to the present case and, as such, without serving charge-sheet, the workmen could not be punished and demoted from Quarry Pick Miners and Loaders to Overburden Removers but admittedly no charge sheet was served; that the transfer from one department to another was covered by Standing Order 26, Exhibit W.10, and this present transfer is proved to be prejudicial to the workmen by Exhibits M.9 to M.16; that the cause of the transfer given in the reference is that the concerned workmen had been giving less load of coal in tubs and the same reason was given also in the Notice Exhibit W. = M.1, but that was not the real cause and the said cause as alleged was baseless and false; that the real cause of the transfer of the workmen concerned from Quarry Pick Miners and Loaders to Overburden Removers is furnished by Exhibits W.1, W.3 and W.5, which prove that as the workmen concerned were complaining against the illegal action of the management in asking the workmen to give excess load since 1961, they have been punished by way of victimisation; that the alleged notice under Section 9A was invalid, because no notice was given to the Secretary of the Union and that the notice was sent by registered post and never under Peon's Book, as falsely alleged, only five or six days before the transfer was to be effective from 13th March, 1962; that it is not correct that the Union, which represents the workmen concerned, was not recognised by the management as is proved by Exhibit W.11 = W.12 which was the agreement entered into between the management and the workmen represented by Khas Karanpura Colliery Workers' Union; that, therefore, their transfers should be set aside and the workmen concerned should be re-transferred to their previous jobs of Quarry Pick Miners and Loaders from the present jobs of Overburden Removers.

10. To me it appears that the crux of the matter is, whether the workmen concerned were transferred from Quarry Pick Miners and Loaders to Overburden Removers with effect from 13th March, 1962, by way of victimisation, as alleged by the workmen or in the normal course of business and *bona fide*, as alleged by the management? If this question is answered in favour of the workmen, then, in my opinion, it would not be necessary to consider the other questions raised on behalf of the parties. I would, therefore, take up first this question.

11. Before, however, I take up the question of victimisation I may clear the way by saying that the contention of the management that the Union, which is representing the workmen, namely, Khas Karanpura Colliery Workers' Union, is not a recognised Union is not correct and is completely negatived by Exhibits W.11 and W.12. Exhibit W.11 is a memorandum of bi-partite settlement dated 22nd August, 1961, between the Employers, Messrs. M. L. Sharma & Co. (Khas Karanpura Colliery) and their Workmen represented by Khas Karanpura Colliery Workers' Union. Exhibit W.12 is another memorandum of settlement dated 28th February, 1961, arrived at in course of Conciliation Proceedings held by the Regional Labour Commissioner (Central), Dhanbad, in the dispute between the management of Khas Karanpura Colliery and their workmen represented by the Khas Karanpura Colliery Workers' Union. These two Exhibits—W. 11 and W. 12 prove beyond doubt that the Khas Karanpura Colliery Workers' Union, which is representing the workmen concerned, was recognised by the management, and, therefore, I hold accordingly.

QUESTION OF VICTIMISATION

12. It is necessary to mention a few facts, which are material for the determination of this issue, and, therefore, they are given below in chronological order:

(a) On 18th September, 1961, the Vice-President of the Union sent a letter to the Manager, Exhibit W.1, with a copy to the Conciliation Officer (Central), Hazaribagh, and the Regional Labour Commissioner (Central), Dhanbad, for favour of early action, to the effect that it had been brought to the notice of the Union that the management was forcing the miners to load coal in excess in the tubs, although the management was paying 36 c.ft. of coal, whereas, it was taking forcibly 40 c.ft. of coal from the miners, and, therefore, the management was requested to pay the right wages accordingly.

(b) On receipt of a copy of this letter Exhibit W.1, the Conciliation Officer on 21st September, 1961, called for comments from the management and the Manager, accordingly, on 29th September, 1961, sent a letter, Exhibit W.2, to the Conciliation Officer saying that the Colliery has only tubs of 36 c.ft. capacity and the miners are paid for 36 c.ft. and the rates have been fixed accordingly and as such it is not understood how the management can compel the miners to give 40 c.ft. in tubs of 36 c.ft. and denied the allegation of the Union contained in the letter Exhibit W.1.

(c) The Conciliation Officer on 5th October, 1961, sent a copy of this letter of the management Exhibit W.2, to the Union and the Union in reply, on 20th October, 1961, sent a letter to the Conciliation Officer (Central), Hazaribagh, Exhibit W.3, with a copy to the Chief Inspector of Mines, Dhanbad, Regional Labour Commissioner (Central), Dhanbad, and Chief Labour Commissioner (Central), New Delhi, saying that the Miners are required to load tubs upto the top level whereas the management are taking load with a heap above the top level of the tubs, which makes the quantity of 40 c.ft. of coal, and, therefore, the Union will feel obliged if the Manager is asked to publish a notice to the workers that the management is not in favour of taking coal loads in the tubs to the heap level of the tubs and that in case any staff gives any pressure to load the tubs with a heap, the Manager will take steps against that staff and a copy of this notice immediately be forwarded to the Union.

(d) The management, according to the workmen, did not comply with the request of the Union conveyed to do in the letter to the Conciliation Officer Exhibit W.3:

From the above facts, it is manifest that the Union, on behalf of the workmen concerned, was protesting against the management taking excess coal loads from the miners from 18th September, 1961, long before the transfer of the workers concerned in March, 1962.

(e) The management, according to the workmen, continued the aforesaid mal-practice despite repeated requests of the Union and thereby the miners continued to suffer immense loss. and, therefore, as a mark of protest, they stopped drawing their weekly wages from 17th December 1961, but went on working normal and giving coal loads, which, however, the management continued to cut down.

(f) The Labour Inspector (Central), Ranchi, visited the Colliery on 22nd January 1962 and again on 28th January 1962, as will appear from his letter dated 7th February 1962, Exhibit W. 4, written to the General Secretary of the Union, in connection with the alleged deduction in tub loads, by the management. In the said letter Exhibit W. 4, the Labour Inspector said:

"On 28th January 1962, I revisited the Colliery to give effect to the proposal of the manager, and met you also. I went to the site where tub loading was being done. I found 7 tubs loaded by the workers of the first shift including those who are involved in the issue. The 'Munshi' reported that he had no complaint against the tub loading. But a representative of the management pointed out that one tub out of those 7 tubs had less than full load and I found that it appeared to have less load as compared to the coal loaded in other 6 tubs."

(g) On 17th February 1962 the Labour Inspector, in continuation of his letter dated 7th February 1962 Exhibit W. 4, sent a letter to the General Secretary of the Union, Exhibit W. 7, saying that he made an inspection of the Colliery on

10th February 1962 under Payment of Wages Act, 1936, and Payment of Wages (Mines) Rules, 1956, and in course of his inspection he found that the management are not complying with the provisions of Rule 17 of the P.W. (Mines) Rules, 1956, as amended in 1961, and, therefore, he recorded the statement of the workers that measurement slips are not issued to the workers as per Rule 17(1) of the Payment of Wages (Mines) Rules and that the workers are not informed of the shortfall of loads on the spot, as provided in the above Rule, and for these and other irregularities under the above Act and Rules necessary action is being taken against this management and it is hoped that the Union will come forward to give evidence in the case.

(h) On 24th February 1962 two miners of the Colliery sent a letter to the Manager of the Colliery with a copy to the Secretary of the Union for doing needful Exhibit W. 6, saying that the notice effecting changes of work from Miners to Pick Miners and Loaders to Overburden Removers from 13th March 1962 had been hung up but the management again compelled them to work in Overburden Removers. The Miners accordingly set out their grievances in detail therein.

(i) On 28th February 1962 the General Secretary of the Union sent a letter, Exhibit W. 8, to the Conciliation Officer (Central), Hazaribagh, enclosing a statement of demand and requested to take up the matter with the management at an early date.

(j) That, thereafter, on 13th March 1962 the Labour Inspector sent a letter to the Manager of the Colliery, Exhibit W. 5, in which he contradicted the statement made by the management in the notice, Exhibit W. M.1, to the effect that the Labour Inspector (Central), Ranchi, had verified that the workers were giving less loads, and, said, in this connection, that

"during the course of my inspection I found that the workers were giving you full tubs loading and in fact in most cases over and above the brim level of the tubs. I also observed that the tubs supplied to the miners were of 39 c. ft. whereas, you are paying them at the rate of 36 c. ft."

"On 28th January 1962 I found that one of the seven loaded tubs appeared to have less load as compared to other tubs, but certainly it did not have coal below brim level of the tub. I also found and verified from spot evidence that in contravention of Rule 17 of the Payment of Wages (Mines) Rules, 1956, as amended in 1961, you have made yourself liable for prosecution for non-issue of measurement slips to the piece rated workers including the miners for non-maintenance of record of work done by the piece-rated workers at the spot in Form IV, and for not informing the workers concerned regarding any short fall in tub loading at the spot."

"You were served with show cause notice dated 10th February 1962 for contravention of Payment of Wages Act and Payment of Wages (Mines) Rules, you have not replied to the above notice so far."

"To solve the dispute and to preserve better relation between management and workers, you had agreed to give wages for 50 per cent of the tub loads deducted. But you have retracted from that assurance also. It is obvious that your plea regarding transfer of miners to overburden work which will adversely affect the wages of these workers is incorrect and baseless."

"Therefore, your action in making any change in the service conditions of these workers without any reasonable cause and ground is improper and violation of code of discipline."

"Hence you are requested to please pay full dues of the affected workers and to withdraw your notice referred to above immediately in intimation to this office. In case full dues are not paid to the workmen concerned within 3 days from the receipt of this letter, necessary action will be taken against you for the recovery of the dues."

(k) The Manager of the Colliery in reply to the letter of the Labour Inspector dated 13th March 1962 Exhibit W. 5 sent a letter on 24th March 1962 Exhibit M. 7 in which he maintained his previous stand.

13. On the foregoing facts, in my opinion, it is established beyond doubt that as the workmen have been agitating through their Union against taking excess load in tubs from the miners, right from 18th September 1961 to prior to the notice issued by the management, the management only by way of victimisation,

being annoyed with the attitude of the workmen and their Union in ventilating their grievances and in protesting against the malafide action of the management to the Labour Inspector and the Labour Inspector having issued on 10th February 1962 a notice to the management for his prosecution notice under Section 9A was issued on 17th February 1962, and, thereafter, the workmen were transferred from Quarry Pick Miners and Loaders to Overburden Removers on the false ground that they were giving less loads of coal in tubs. The falsity of the ground is proved by the letter of the Inspector, Exhibits W. 5 and W. 7, which are certainly reliable documents in favour of the workmen concerned. I, therefore, hold, for the reasons given above, that the workmen concerned were transferred from Quarry Pick Miners and Loaders to Overburden Removers only by way of victimisation, and, further that the ground alleged for the said transfer is baseless and false.

14. I, therefore, hold that the transfers of the workmen concerned were *unjustified and malafide*.

15. In view of my above decision, I do not think it is at all necessary for the purpose of this reference to decide the other questions raised on behalf of the parties and, therefore, I express no opinion on them.

16. The next question is to what relief are the workmen entitled and from what date. Obviously the transfers of these workmen being malafide and unjustified must be set aside, and, therefore, I set them aside. The said transfers being set aside, as a matter of course, they must be retransferred to their previous jobs, which they were doing, namely, as Quarry Pick Miners and Loaders.

17. It was admitted by M.W. 2—Shri Nirmal Chatterjee that about 200 miners were working in Argada Quarry No. 1. On the evidence of W.W. 1—Shri Raghunath Prasad, the Argada Quarry No. 1 has been closed since about one year but the other workmen, who were working in coal in Argada Quarry No. 1 since after the closure of the quarry, have been transferred to the Incline. I find no reason why these 43 workmen also should not be given their old jobs along with other workers, who are doing their previous jobs as Quarry Pick Miners, and Loaders. I, therefore, direct that these 43 workmen, who were admittedly piece-rated workers and not time-rated workers, should be put back in their previous jobs as Quarry Pick Miners and Loaders with effect from 16th March 1962, when they joined as Overburden Removers. These workmen, therefore, would be entitled to their wages as Quarry Pick Miners and Loaders *minus* the wages, if any, they might have got as Overburden Removers for the period, when they joined as Overburden Removers upto the date of their reinstatement.

18. The parties will bear their own cost of this reference.

19. This Award must be implemented within one month from the date when this Award becomes effective after its publication under Section 17 of the Act.

20. This is the Award, which I make and submit to the Central Government under Section 15 of the Act.

(Sd.) RAJ KISHORE PRASAD,

Presiding Officer,

Camp: Ranchi,

Central Government Industrial Tribunal,

Dated the 13th September, 1963.

Dhanbad.

[No. 2/32/62-LRII]

S.O. 2907.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Labour Court, Hyderabad, in the matter of a complaint under section 33A of the said Act, from Shri V. R. Mazumdar of the State Bank of Hyderabad, which was received by the Central Government on the 26th September, 1963.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, ANDHRA PRADESH,
HYDERABAD.

PRESENT:

Sri D. Subba Rao, B.A., B.L.—*Presiding Officer.*

Date: 23rd September 1963

C.M.P. No. 106/63.

BETWEEN:

Sri V. R. Mazumdar, C/o The State Bank of Hyderabad, Staff Association, Gunfoundry, Hyderabad.—*Petitioner.*

Vs.

The State Bank of Hyderabad, Gunfoundry, Hyderabad.—*Respondent.*

APPEARANCES:

Sri K. K. Mandal and Sri K. Satyanarayana, on behalf of workman.

Sri J. A. Pinto, on behalf of Management.

AWARD

This is an application filed by Sri V. R. Mazumdar of the State Bank of Hyderabad under Section 33(a) of the I.D. Act. The case of the Petitioner is that he has been working as a Clerk in the Raichur Branch of the State Bank of Hyderabad in the cash Department, that the State Bank of Hyderabad had instituted a domestic enquiry against the Petitioner and discharged him and applied to the Central Government Labour Court at Delhi under Section 33(2) of the I.D. Act on 22nd April, 1961 for according permission to the action taken. Later the Respondent had filed O.P. No. 60/61, dated 22nd April 1961 seeking permission to withdraw the main application. That application was "dismissed as withdrawn" on 23rd November 1961. Latter a fresh enquiry was instituted against the applicant for the same charges and the applicant has been placed under continued suspension. Agrieved by the said order of the Respondent, this application has been filed as the fresh enquiry ordered against the applicant and the order placing him under suspension are in violation of principles of natural justice. The applicant contends that it is not open to the opposite party to order a fresh trial for the same alleged offence. Therefore the petitioner prays for quashing the order instituting the fresh enquiry and placing him under suspension. He also prays for payment of his wages minus the subsistence allowance paid to him.

In his Counter the respondent contends that this Court has no jurisdiction to entertain the application as Section 33 of the I.D. Act does not warrant the entertainment of such applications, until any punishment is imposed against the applicant. The Respondent further contends that the effect of the previous order passed by the Central Labour Court, Delhi was in essence ordering the withdrawal of the previous reference made by the employer and that it does not tantamount the dismissal of the application on merits. They also deny their liability to pay anything more than the subsistence allowance till the conclusion of the fresh enquiry. They further contend that the employer is entitled to institute a fresh enquiry on the same facts in view of the withdrawal of the previous application.

This application which was originally filed in the Central Labour Court, Delhi has been transferred to this Court as per the orders of the Central Government, Ministry of Labour and employment, No. 55(2) 63 Lr. 4, dated 23rd February 1963.

The parties had not adduced any oral evidence in this Case. They have only filed certain documents. In view of the contentions raised in the pleadings the following facts can be taken as admitted. (1) That the applicant was working as a Clerk in the Raichur Branch of the State Bank of Hyderabad when a domestic enquiry was instituted against him. (2) As a result of the said enquiry he was ordered to be discharged from service. (3) That the applicant had preferred an appeal against the said order of discharge. (4) That during the pendency of the said appeal the matter was referred to the Central Labour Court, Delhi by the State Bank of Hyderabad under Section 33(2) of the I.D. Act for according approval for the action taken by the Employer. (5) That while the said application was pending before the Labour Court, Delhi, an application has been filed by the employer for withdrawal of the same.

Ex. W35 is the order of the Central Government Labour Court, Delhi, dated 23rd November 1961 which reads *inter alia* as follows: "Para (3) This application was heard in part at Hyderabad and the documents, Exts. M1 to M8 were marked.

In the course of hearing there, it transpired, that the appeal, that had been preferred by the opposite party to the management against the order of removal passed against him was pending, and had not been disposed of. The matter was adjourned to this day for further arguments, to enable the bank to dispose of the appeal meanwhile. Para (6) Today, when the matter came on for hearing, the memo Ex. M9 was filed on behalf of the bank. It is to the effect that the appeal of the employee had been heard, that the appellate authority had passed an order, copy of which was enclosed with the memo and that the applicant was withdrawing the application made under Section 33(2)(b). In appeal the General manager ordered fresh enquiry into the charge. It is in accordance with this order, that the management decided to withdraw the present application. In view of the memo Ex. M9, no further questions arise. Para (7) In the result the petition is dismissed as withdrawn. No order as to costs." There is absolutely no scope for doubt regarding the effect of the expression used by the Central Government Labour Court "dismissed as withdrawn". It is nobody's case that it has been dismissed on merits. On the other hand the above extracted portion of the order clearly indicates that the application has been withdrawn by the employer because the appellate authority of the Bank had ordered fresh trial of the case. In view of the fresh enquiry which has been ordered by the appellate authority the application preferred by the management under 33(3)(b) would become automatically infructuous. That application has been preferred because of the order of discharge passed against the present applicant. The said order of discharge was no more in force as the appellate authority had ordered a re-trial. In view of these circumstances, the management had filed the application for withdrawal of the main application and Ex. W35 was the order passed thereon. Even though the order reads as "dismissed as withdrawn" it was not a dismissal on merits. On the other hand, the reasons given by the Central Government Labour Court, clearly give an indication that he was allowing the withdrawal of the application in view of the circumstances stated by the management. As it has been allowed to be withdrawn and as it could not be kept pending it was disposed of as 'dismissed'. This expression dismissed cannot be construed as a dismissal on merits or as a negation of the relief sought for by them. It will not be reasonable to interpret this as a dismissal of the relief sought for by the management. Therefore the sum and substance of this order is allowing the withdrawal by the management as it was obviously infructuous. Therefore I am unable to agree with the contention urged on behalf of the present applicant that this expression 'dismissal' precludes the management from taking any further action. As is evident from the said order the dismissal ordered by the Court was only to enable the fresh enquiry to be concluded in pursuance of the order of the Bank's appellate authority. Therefore I cannot consider it to be a reasonable interpretation of the expression 'dismissed' used in this order to say that the relief sought for by the management has been negatived by that court. As I have already stated the expression 'dismissed' only indicates disposal for statistical purposes and not a dismissal on merits. The sum and substance of the said order was the withdrawal of the main application.

Incidentally, it is contended on behalf of the present applicant that the appellate authority had no right to order a fresh enquiry. This is not the appropriate form for considering the validity of the fresh enquiry ordered by the appellate authority of the bank. After the fresh enquiry is concluded and in case the employee is in any way aggrieved by the result of the said fresh enquiry then he has got the remedy open to him to come to the appropriate Court under Section 33(a) of the I.D. Act. Therefore, I will not be justified if I consider the validity of the order of the appellate authority of the bank in ordering a fresh enquiry against the present applicant.

It has been contended on behalf of the management that this Court has no jurisdiction to entertain this application under 33(a) of the I.D. Act as there is no jurisdiction pending before this Court. As long as the master and servant relationship continues to exist between the employer and employee and when the employer takes any action by which the employee is aggrieved he is certainly entitled to come to this Court under Section 33(a) of the I.D. Act. After all the fresh enquiry is an off shoot of the previous enquiry which was the subject matter of the application filed by the employer before the Central Labour Court which has been allowed to be withdrawn by the said Court. Therefore I am unable to accept the contention that this Court has no jurisdiction to entertain this application.

It is further contended that there is no substantial order passed by the employer to enable the employee to come to this Court under Section 33(a). Whether suspension is a punishment or not, it cannot be denied that the employee is aggrieved by the said order. Therefore it is open to him to come to this Court as he is aggrieved by the order placing him under continued suspension. Hence I over-rule this contention also urged on behalf of the management.

Irrespective of the question whether the former application is dismissed or allowed to be withdrawn by the Central Labour Court we have now to consider whether it is open to the management to order a fresh enquiry or not. In support of this contention that a fresh enquiry on the same charges is not maintainable the learned representative of the employee relies on 1959—I—L.L.J., page 504 (Kerala High Court), which lays down that the suspension of the employee cannot be continued after the decision of the Tribunal refusing to accord permission to the action taken by the management. In the instant case there is no question of continuance of the suspension after the refusal of the Industrial Tribunal. The suspension has been ordered in pursuance of the fresh enquiry which has been ordered by the appellate authority of the Bank.

In support of its contention that the management is competent to institute a fresh enquiry in spite of the refusal of the Industrial Tribunal to accord permission for the action taken in the first enquiry and on the very same facts, the management relies on 1959—I—L.L.J., page 285 (Supreme Court), which states *inter alia* as follows: "As the purpose of section 33 of the Industrial Disputes Act is merely to give or withhold permission and not to adjudicate an industrial dispute, any finding in an application under Section 33 would not operate as *res judicata* and bar raising an Industrial dispute or bar the employer from holding a second enquiry in respect of the same misconduct (which is the subject matter of the application under Section 33 of the Industrial Disputes Act)". The management also relied on 1963—II—L.L.J., page 58 (Bench decision of the Madras High Court) which lays down as follows: "It was however further observed that the matter of misconduct alleged against the concerned workman is released. It could be dealt with by the management at their option, according to the rules. It would be open to the management even now, to pursue the charge by conducting a fresh enquiry after due notice to the workman and to deal with the workman. It would be theoretically open to the management to pursue the charge further upon the alleged misconduct, to hold a fresh enquiry and to deal with the employee on that basis". This is a case in which the Labour Court refused to accord permission to the action taken by the management (dismissal). On behalf of the employee reliance is placed on 1962—I—L.L.J., page 420 (Supreme Court), which observes as follows: "If the tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer. In such a case no specific provision as to reinstatement is necessary and by the very fact of the tribunal not approving the action of the employer, the dismissal or discharge of the workman would be of no effect and the workman concerned would continue to be in service as if there never was any dismissal or discharge by the employer". This decision does not refer to be Supreme Court decision reported in 1959—I—L.L.J., page 285. It only deals with the effect of the order of the Tribunal refusing to approve of the action taken by the management in the domestic enquiry. It does not deal with the powers of the management to order a fresh enquiry. Therefore it cannot be considered to be an authority on the point whether a fresh enquiry can be ordered by the management on the same charges after the refusal of the Industrial Court to grant approval.

1959—II—L.L.J., page 231 (Supreme Court) justifies the action of the management in not providing for any subsistence allowance during the pendency of the domestic enquiry 1957—I—L.L.J., page 17 is an authority for the same position. It also lays down that suspension is not a punishment.

This in any view of the matter I find that the ordering of a fresh enquiry by the management is not illegal and opposed to the principles of natural justice. In the instant case the fresh enquiry is in fact a re-trial and as such is a continuation of the previous enquiry. As I have already discussed the institution of a subsequent enquiry after the termination of the previous enquiry and even after the Industrial Tribunal refusing to grant permission for the result of the previous enquiry, will be quite in order. I have already discussed the effect of the order of the Central Government Labour Court, Delhi, "dismissing" the application filed by the management as "withdrawn". For all these reasons, I am unable to accede to the request made by the employee as it is devoid of any merits. Hence I hereby dismiss the same.

Dictated to the Shorthand writer and submitted to the Government this the 23rd day of September, 1963.

(Sd.) D. SUBBA RAO,

Presiding Officer.

C.M.P. No. 106/63

ANNEXURE

List of witnesses examined : Nil

List of Documents exhibited by consent

By Workers

By Management :

W.1.	Office Order d/12-11-60.	M.1.	Shri V. R. Mazumdar's Application to the Secretary State Bank of Hyd.
W.2.	Letter to Shri V.R. Mazumdar by the Secretary. 19-12-60	M.2.	Shri V.R. Mazumdar's letter to the General Manager.
W.3.	Letter to Shri P.L. Galgati by the Secretary. 21-12-60	M.3.	General Manager's letter statement in the above case. 9-11-61
W.4.	Memo issued to Shri V.R. Mazumdar by P.L. Galgati. 28-12-60		
W.5.	Memo issued to Shri V.R. Mazumdar by the Enquiring Officer. 3-1-61		
W.6.	Letter from V.R. Mazumdar to the Enquiring Officer. 15-1-61		
W.7.	Letter to Shri V.R. Mazumdar by the Secretary. 6-1-61		
W.8.	Memorandum issued to Muzamdar by the Enquiring Officer. 7-1-61		
W.9.	Letter addressed to the Enquiring Officer by Shri V.R. Mazumdar. 10-2-61		
W.10.	Memo to Muzamdar by the Enquiring Officer. 11-2-61		
W.11.	Acknowledgement of letter d/7-1-61 issued by V.R. Mazumdar to the Enquiring Officer. 12-2-61		
W.12.	Application given by V.R. Mazumdar before the Enquiring Officer. 13-2-61		
W.13.	Enquiring officers findings on the enquiry held against V.R. Mazumdar. 14-2-61		
W.14.	Secretary's letter to Shri V.R. Mazumdar. 15-2-61		
W.15.	Secretary's letter to Shri V.R. Mazumdar. 16-2-61		
W.16.	Secretary's Memo to Shri V.R. Mazumdar. 17-2-61		
W.17.	Memo issued by the Secretary to Shri V.R. Mazumdar. 18-2-61		
W.18.	Written statement by the employers before the I.T. Bombay. 19-2-61		
W.19.	Memo issued to Shri V.R. Mazumdar by the Secretary. 20-2-61		

W.20. Letter issued to Shri V.R. Mazumdar by the Secretary.
23-5-61

W.21. Shri V.R. Mazumdar's letter to the Gen. Manager.
25-5-61

W.22. Reply statement given by V.R. Mazumdar before the I.T. Delhi.
25-7-61

W.23. Letter addressed to V.R. Mazumdar by the Enquiring Officer.
23-12-60

W.24. Letter by Shri V.R. Mazumdar to the Secretary.
21-2-61

W.25. Letter by V.R. Mazumdar to Secretary State Bank of Hyderabad.
23-2-61

W.26. Secretary's letter to V.R. Mazumdar.
24-2-61

W.27. Secretary's letter to Shri V.R. Mazumdar.
23-5-61

W.28. Central I.T.'s notice to the parties in C.P. No. 60/61.
5-10-61

W.29. Letter from the Secretary to Shri V.R. Mazumdar.
10-11-61

W.30. Counter issued by Shri K.K. Mandal in C.P. No. 60/61.
125-10-61

W.31. Order of Discharge issued to Shri V.R. Mazumdar.
127-10-61

W.32. General Manager's Memo in regard to the discharge of Shri V.R. Mazumdar.
19-11-61

W.33. Secretary's letter to Shri V.R. Mazumdar.
10-11-61

W.34. Covering letter for the certified Copy issued by the Central Labour Court, Delhi.
W.35. Certified copy of the Order issued by the Central Labour Court, Delhi.
W.36. General Manager's notice to the workman V.R. Mazumdar.
W.37. Enquiring Officers Memo to V.R. Mazumdar.
W.38. V. R. Mazumdar's letter to the Enquiring Officer.
W.39. Enquiring Officer's letter to V.R. Mazumdar.
16-1-62

W.40. V.R. Mazumdar's letter to the Gen. Manager.
19-1-62

W.41. Secretary's letter to Shri V.R. Mazumdar.
131-1-62

W.42. Duplicate copy of the Statement given by the Gen. Manager.

W.43. Letter by Shri V.R. Mazumdar to the Enquiring officer.
I-2-62

W.44. Enquiring Officer's letter to V.R. Mazumdar.

W.45. Central Labour Tribunals notice to the Parties 19-3-62.

W.46. Enquiring Officer's letter to Shri V.R. Mazumdar.
21-4-62

W.47. Enquiring Officer's letter to Shri V.R. Mazumdar.
24-3-62

(Sd.) D. SUBBA RAO,

Presiding Officer.

[No. 55(46)/63-LRIV.]

New Delhi, the 4th October 1963

S.O. 2908.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Canara Industrial and Banking Syndicate Limited and their workmen in respect of the matter specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Dr. Mir Siadat Ali Khan as the Presiding Officer with headquarters at Hyderabad, and refers the said dispute for adjudication to the said Industrial Tribunal.

SCHEDULE

Whether the transfer of Sri K. Veeranna, a workman of the Canara Industrial and Banking Syndicate Limited from Vijayawada to Banaganapalli is justified and, if not, to what relief is the workman entitled?

[No. 51(62)/63-LRIV.]

New Delhi, the 7th October 1963

S.O. 2909.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Chandigarh in the industrial dispute between the employers in relation to the New Bank of India Limited and their workmen which was received by the Central Government on the 1st October, 1963.

BEFORE SHRI K. L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
CENTRAL, CHANDIGARH

REFERENCE NO. 4/C or 1963.

BETWEEN

the Employees in relation to the New Bank of India Limited and their workmen Rohtak Branch.

PRESENT:

Shri S. L. Chawla workman concerned in person.

Shri N. C. Sikri for the Respondent-Bank.

AWARD

An industrial dispute having come into existence between the New Bank of India Ltd. (Rohtak Branch) on the one hand and their workmen on the other, the same was referred to this Tribunal for adjudication by the Government of India.

Ministry of Labour and Employment vide their Order No. 51(13)/63-LRIV dated 27th June, 1963. The only item of dispute as mentioned in the said order is as follows:—

Whether the management of the New Bank of India Limited was justified in appointing Shri K. K. Modi as officiating Accountant during the years 1961 and 1962 and did such appointment amount to the supersession of the claims of Shri S. L. Chawla, and if so, to what relief is Shri Chawla entitled?

Usual notices were issued to the parties calling upon the workmen to file their statement of claim and on the management to file their written statement. On the date of hearing i.e., 26th September 1963 Shri S. L. Chawla, workman concerned, appeared before me and stated that he did not wish to proceed with the present reference and withdrew the demand raised by him. Shri N. C. Sikri, who appeared for the management, stated that the Bank did not claim any costs. In terms of the settlement arrived at between the parties and mentioned in the statements of the workman concerned and that of Mr. N. C. Sikri, the demand is dismissed as withdrawn. No. order as to costs.

(Sd.) H. L. GOSAIN,

Presiding Officer,

The 27th September 1963.

Industrial Tribunal, Central, Chandigarh.

[No. 51(13)/63-LRIV.]

S.O. 2910.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following correction made by the Central Government Industrial Tribunal, Bombay, under rule 28 of the Industrial Disputes (Central) Rules, 1957, in its award issued in the industrial dispute between the employers in relation to the Sitasaongi Mine of Central Provinces Manganese Ore Company and their workmen, published with the notification of the Government of India in the Ministry of Labour and Employment, No. S. O. 2593, dated the 5th September, 1963, namely:—

"In exercise of the powers conferred on me by Rule 28 of the Industrial Disputes (Central) Rules 1957, I hereby issue the following corrigendum in respect of a clerical mistake which has accidentally occurred on page 1 of my Award.

For the words 'Coal Mining' against 'Industry' substitute the words 'Manganese Mining'.

(Sd.) SALIM M. MERCHANT,

Presiding Officer".

[No. 21/17/62-LR.II.]

S.O. 2911.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following corrections made by the Central Government Industrial Tribunal, Bombay, under rule 28 of the Industrial Disputes (Central) Rules, 1957, in its award made in the industrial dispute between the employers in relation to the Bhilai Steel Project of Hindustan Steel Limited and their workmen employed in Rajhara, Nandini and Hirri Mines, and published with the notification of the Government of India in the Ministry of Labour and Employment, No. S.O. 1722 dated the 15th June, 1963, namely:—

In the said award;

in paragraph 29,

in the Table on 'Work charged', under the column of 'Hirri' for "77" under the heading "Mechanised", read 'nil' and for 'nil' under the heading "Manual" read "77".

(Sd.) SALIM M. MERCHANT,

Presiding Officer.

[No. 22/22/62-LR.II.]

ORDERS

New Delhi, the 1st October 1963

S.O. 2912.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Pure Lalkdih Colliery, Post Office Nirsachatti, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the management were justified in terminating the employment of Sarvshri Pran Kista Majhi, Sawpan Sengupta, Pasupati Mondal, Sadan Mahato, Surendra Karmakar, Sudhir Ghafi and Gokul Singh, all bailing mazdoors with effect from 25th March 1963. If not, to what relief are they entitled?

[No. 2/34/63-LR.II-II.]

S.O. 2913.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Umaria Colliery, Post Office Umaria, District Shahdol and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the management of the Umaria Colliery was justified in dismissing the following workmen from service; and if not, to what relief are these workmen entitled?

1. Shri S. P. Singh, Electrical Fitter.
2. Shri Dhannu, Boiler Cleaning Boy.
3. Shri Jagdish, Hospital Dresser.
4. Shri Tillaiya, Power House Stoker.

[No. 5/47/63-LRII.]

S.O. 2914.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Pure Lalkdih Colliery, Post Office Nirsachatti, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the management was justified in giving shift-duties during the hours 4.00 P.M. to 12 mid-night and 12.00 mid-night to 8 A.M. in alternate weeks with effect from 22nd May 1963 to Shri B. N. Sengupta? If not, to what relief is the workman entitled.

[No. 2/34/63-LRII-I.J]

New Delhi, the 3rd October 1963

S.O. 2915.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Vysya Bank Limited,

Hyderabad and their workmen in respect of the matter specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Dr. Mir Siadat Ali Khan as the Presiding Officer, with headquarters at Somajiguda, Hyderabad, and refers the said dispute for adjudication to the said Industrial Tribunal.

SCHEDULE

Whether the transfer of Shri M. Manikyam, an employee of the Hyderabad Branch of the Vysya Bank Limited, Bangalore from that Branch to Hindupur Branch was justified. If not, to what relief is Shri Manikyam entitled?

[No. 51(57)/63-LRIV.]

New Delhi, the 5th October 1963

S.O. 2916.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Punjab National Bank Limited, New Delhi and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Delhi, constituted under section 7A of the said Act.

SCHEDULE

- (1) Whether the Bank was justified in terminating the services of Shri Madan Lal Wahi employed as Godown Keeper in the Mhow and Indore Offices? If not to what relief is he entitled?
- (2) Whether by virtue of Shri Madan Lal Wahi working for Indore Office he is entitled to wages as admissible to Area II and, if so, for what period?

[No. 51(63)/63-LRIV.]

New Delhi, the 7th October 1963

S.O. 2917.—Whereas, the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Bagdigi Colliery of Messrs. Lodna Colliery Company (1920) Limited, Jharia, District Dhanbad, and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas, the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the transfer of Shri Janardan Pandey, time keeper, by the management of the Bagdigi Colliery was justified? If not, to what relief is the workman entitled?

[No. 2/50/63-LR.II.]

S.O. 2918.—Whereas an industrial dispute exists between the employers in relation to Messrs. P. T. Ankesaria and Company, Bombay and their workmen represented by the Transport and Dock Workers' Union, Bombay;

And whereas, the said employers and the said workmen have, under sub-section (1) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947) referred the dispute to arbitration by an Arbitration Agreement and have forwarded to the Central Government under sub-section (3) of the said section a copy of the said Arbitration Agreement;

Now, therefore, in pursuance of sub-section (3) of section 10A of the said Act, the Central Government hereby publishes the said Arbitration Agreement which was received by it on the 3rd October 1963.

AGREEMENT

(Under section 10-A of the Industrial Disputes Act, 1947)

BETWEEN

M/s. P. T. Anklesara & Company, Bombay—*Representing Employers.*

AND

Transport & Dock Workers' Union, Bombay—*Representing workmen.*

It is hereby agreed between the parties to refer the following Industrial Dispute to the arbitration of Shri S. C. Sheth, C/o M/s. Eastern Bunkerers Ltd., Scindia House, Ballard Estate, Bombay-1,

1. The terms of reference will be as follows:—

Whether the termination of services of Sarvashri (1) A. Muthuswami, (2) Allauddin, (3) Abdulla and (4) Sowri Kasi, Specialmen by M/s. P. T. Anklesaria & Co., is justified? If not, to what relief these workmen are entitled to including reinstatement?

2. Name of the Employer: M/s. P. T. Anklesaria & Co., Ismail Building, D. N. Road, Bombay-1.

3. Transport & Dock Workers' Union: P. D'Mello Bhavan, P. D'Mello Road, 2nd Floor, Carnac Bunder, Bombay-1.

4. Number of workmen employed: 1,800.

5. Number of workmen concerning the dispute: 4 (four only).

We further agree that the decision of the arbitrator shall be binding on us.

Witnesses:

Signature of the Parties:

(1) (Sd.) Illegible.	(1) (Sd.) Illegible.	(2) (Sd.) Illegible.
Representing employers.		Representing workmen.

(2) (Sd.) Illegible,	Partner, M/s. P. T. Anklesaria & Co.	Secretary, T. & D. Workers' Union.
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The undersigned agreed to act as arbitrator in the above dispute.
Bombay,

(Sd.) Illegible,

Arbitrator.

[No. 28/69/63/LRIV.]

A. L. HANNA, Under Secy.

New Delhi, the 1st October 1963

S.O. 2919.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts having regard to the location of the factories in an implemented area, the Bombay Electric Supply and Transport Undertakings Bus Garage at Wadala, Bombay from the payment of the employers' special contribution leviable under Chapter VA of the said Act for the period upto and including the 9th June, 1964.

[No. F. 6(104)/63-HI.]

New Delhi, the 5th October 1963

S.O. 2920.—In exercise of the powers conferred by sub-section (3) of section 1 of the Maternity Benefit Act, 1961 (53 of 1961), the Central Government hereby notifies the first day of November, 1963 as the date on which the said Act shall come into force in relation to mines in the territories to which it extends.

[No. F. 12(3)/(i)/61-HI.]

New Delhi, the 8th October 1963

S.O. 2921.—In exercise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 20th October, 1963 as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already been brought into force), and Chapters V and VI [except sub-section (1) of section 76 and sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the area comprising the revenue village of Adichanallore in the Quilon Taluk in the Quilon District of the State of Kerala.

[No. F. 13(30)/63-HL.]

O. P. TALWAR, Under Secy.

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 25th September 1963

S.O. 2922.—Whereas the Central Government is of opinion that the system of booking accommodation in pilgrim ships for Haj pilgrims specified in the Schedule annexed hereto should be enforced during the Haj Season in 1964.

Now, therefore, in exercise of the powers conferred by Section 456 of the Merchant Shipping Act, 1958, the Central Government hereby exempts Messrs. Mogul Line Ltd., Bombay, and every other shipping company engaged in pilgrim traffic from Bombay to the Hedjaz, from such provisions of the said Act and the Indian Pilgrim Ships Rules, 1933, as are not in conformity with the aforesaid system of booking accommodation in pilgrim ships carrying pilgrims from Bombay to Jeddah during the year 1964.

THE SCHEDULE

SYSTEM OF BOOKING ACCOMMODATION AT BOMBAY FOR HAJ PILGRIMS

1. Schedule of sailings.—Every shipping company shall announce a provisional schedule of outward sailings as soon as possible. Firm dates of sailings shall be advertised by the Shipping Company at least 15 days in advance as required under the provisions of the Merchant Shipping Act, 1958. The penal provisions of the Merchant Shipping Act, 1958, shall operate with reference to the firm sailing dates as advertised.

2. Advance reservations of Passages.—(i) Reservation lists for all sailings announced in the provisional schedule shall be opened by the company simultaneously and intending pilgrims will have the option of availing passages in whatever ship they like. Such reservations shall be made only on payment of full passage money by applicants (adults and children) for first and deck class (according to the details which may be specified in the announcement of the outward sailing programme of the Shipping Company), accompanied by applicant's full particulars with five copies of his photograph (in case of male applicant) out of which one will be pasted on the application for reservation of passages. When reservations of a particular ship are complete, the Shipping Company shall refuse to accept any further deposits for that particular ship.

(ii). A cabin class pilgrim may make an application for reservation of a deck passage for his servant, and may in genuine cases take any other servant than the one mentioned in the application.

3. Registration in Waiting Lists.—Persons whose passage fares for advance reservation are received after the reservation of accommodation on all the ships is complete shall be kept on the common waiting lists with the Shipping Company. Registration on waiting lists shall be made strictly in order of the receipt of full passage money aforesaid by the Shipping Company.

4. How to obtain tickets.—All persons who may have made advance reservations of passage shall have to obtain their tickets at least 4 days before the sailing date. Such of the persons as fail to obtain tickets 4 days in advance shall be deemed to be not travelling in those ships. Passages not previously booked in particular ships or released by passengers who do not obtain their tickets 4 days in advance shall be offered according to the order referred to in paragraph 3 above to the persons whose names are registered on the waiting lists.

5. Treatment of advance passage money when passages are availed of.—The advance passage money shall as far as possible be paid by applicants for passages only in the form of bank draft and shall be accounted towards the cost of passage when the passage has been availed of.

6. Treatment of the advance passage fare when the passage is not availed of.—When a person has reserved his passage, and does not intend to avail of the same and gives notice of his intention within the time limit notified by the Shipping Company then his advance passage fare shall be refunded in full.

(II) In the case of person who has reserved his passage but is prevented from availing of the same due to unforeseen circumstances, such as death in the family, the advance passage fare may be refunded to him in full; any dispute that may arise shall be referred in the first instance to the Chairman, Port Haj Committee, Bombay, and if the Chairman's decision is not acceptable to the pilgrim concerned or to the Shipping Company, the Chairman shall refer the matter to the Presidency Magistrate or the Magistrate of the first class exercising jurisdiction in the Port. The decision of the Magistrate shall be final and there shall be refunded to the pilgrims any amount allowed to him by such decision.

(III) A person who has reserved his passage by a particular ship but is unable to avail of the same and desires to travel by a subsequent ship, may be given full credit in respect of his advance passage fare towards the cost of passage.

(IV) In all other cases where a person has reserved his passages but does not give timely notice as stated above, a deduction of 10 per cent. will be made while refunding the amount paid by him.

(V) When a person who has got his name registered on the waiting list and is not offered any passage, the amount paid by him as deposit, shall be refunded to him in full.

7. Scrutiny.—The records of the Shipping Company in respect of reservation of passages as well as waiting lists shall be open to scrutiny by the Central Government, Chairman of the Port Haj Committee, Bombay, Executive Officer, Port Haj Committee, Bombay or 2 members of the Port Haj Committee, Bombay nominated by the Chairman, or any Officer or Officers, nominated by the Committee for this purpose.

MINISTRY OF MINES & FUEL

New Delhi, the 30th September 1963

S.O. 2923.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum between Barauni Refinery in Bihar State to the Haldia Port in Calcutta in West Bengal State, a pipeline should be laid by the Indian Refineries Limited and that for the purpose of laying such pipeline, it is necessary to acquire the right of user in the land described in the Schedule annexed hereto;

2. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962, (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipelines under the land to the Competent Authority—**Special Land Acquisition Officer, C/o. Indian Refineries Limited, P.O. Hathidah, District Patna.** Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

Case No. 5/HATH

State—Bhar	District-Monghyr	Thana-Luc-Keesara)	
Village with Thana No.		Survey No. (Plot No.) Extent .in Acre	
Barhia English No. 137	.	17 6 7	0.110 0.110 0.010
Juas No. 136	.	444 494 493 491 492 490 489	0.080 0.010 0.110 0.010 0.230 0.060 0.170

[No. 31/57/63-ONG.]

S.O. 2924.—The notification of the Government of India in the Ministry of Mines and Fuel S.O. No. 2638, dated the 4th September, 1963, published in Part II Section 3 sub-section (ii) of the Gazette of India, dated the 14th September, 1963, is hereby cancelled.

[No. 31/46/63-ONG.]

New Delhi, the 3rd October 1963

S.O. 2925.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum between Barauni Refinery in Bihar State and Kanpur in Uttar Pradesh State, a pipeline should be laid by the Indian Refineries Limited and that for the purpose of laying such a pipeline, it is necessary to acquire the right of user in the land described in the Schedule annexed hereto;

2. Now, therefore in exercise of the powers conferred by sub-section (i) of section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipelines under the land to the Competent Authority at 7/168, Swarup Nagar, Kanpur in the office of the Indian

Refineries Limited. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

State—Uttar Pradesh Distt.—Fatehpur

Tehsil—Khaga

Village	Survey No.	Extent	Village	Survey No.	Extent
		B. B. B.			B. B. B.
I. Chhimi . . .	479	o 8 5	I. Chhimi—contd.	1973	o 8 15
	480	o 2 10		1974	o 0 15
	481	o 6 0		1975	o 4 5
	1426	o 3 15		1985	o 1 5
	1427	o 6 5		1989	o 3 15
	1428	o 0 15		1990	o 13 5
	1429	o 12 0		1991	o 2 10
	1431	o 13 5		1992	o 7 15
	1432	o 0 15		1993	o 1 15
	1433	o 8 5		1996	o 4 5
	1434	o 4 5		2581	o 0 5
	1435	o 1 5		2582	o 0 5
	1459/2	1 9 0		2584	o 0 15
	1460	o 0 15		2585	o 3 5
	1462	o 5 0		2586	o 0 15
	1464	o 0 15		2587/2	1 18 5
	1465	o 4 5		2588/2	o 16 0
	1466	o 5 0		2608	o 0 5
	1467	o 13 5		2610	o 16 15
	1469	o 0 15		2611	o 0 5
	1470	o 10 15		2612	o 0 15
	1471	o 3 0		2613	o 9 5
	1474	o 11 15		2616	o 3 15
	1475	o 8 10		2617	o 1 0
	1476	o 5 5		2618	o 0 15
	1477	o 3 15		2619	o 1 15
	1479	o 0 5		2621	o 8 15
	1488	o 11 0		2623	o 2 10
	1489	o 8 0		2625	o 13 5
	1490	o 2 0		2629	o 8 10
	1491	o 2 5		2631	o 5 15
	1492	o 4 0		2663	o 11 5
	1493	o 13 15		2664	o 4 5
	1494	o 5 10		2665	o 1 5
	1495	o 0 15		2712	o 0 15
	1497	o 0 5		2713	o 8 0
	1840	o 1 5		2716	o 5 15
	1841	o 4 5		2717	o 1 15
	1842	o 3 15		2718	o 3 15
	1861	o 0 5		2719	o 0 10
	1864	o 2 10		2720	1 11 15
	1865	o 2 10		2725	o 9 0
	1866	o 8 15		2728	o 3 0
	1867	o 5 15		2729	o 3 10
	1874	o 4 0		2736	o 8 15
	1875	o 4 5		2737	o 2 15
	1876	o 1 5		2739	o 7 5
	1877	o 0 5		2742	o 3 15
	1878	o 0 5		2743	o 19 0
	1879	o 0 5		2750	o 8 10
	1880	o 8 15		2751	o 5 0
	1881	o 1 15		2752	o 8 10
	1882	o 4 5		2753	o 5 0
	1883	o 4 5		2759	o 3 15
	1940	o 5 15		2760	o 2 0
	1946	o 8 10		2761	o 8 10
	1947	o 13 0		2762	o 1 0
	1971	o 8 15		4854/1873	o 2 10
	1972	o 1 0			

Village.	Survey No.	Extent	Village	Survey No.	Extent
		B. B. B.			B. B. B.
2. Purain	842	0 6 0	3. Katoghan— <i>contd.</i>	1812	0 2 0
	843	0 10 0		1813	0 2 0
	844	0 2 5		1814	0 2 0
	860	0 5 10		1815	0 1 0
	861	0 15 10		1816	0 1 10
	863	0 7 5		1817	0 5 0
	864	0 5 5		1822	0 9 0
	876	0 2 5		1823	0 1 15
	877	0 6 10		1832	0 3 0
	878	0 13 10		2081	1 9 5
	879	0 1 5		2083	1 1 0
	883	0 8 0		2168	0 4 0
	884	0 2 10		2170	0 0 10
	885	0 1 5		2171	0 0 5
	886	0 10 5		2173	0 12 5
	890	0 5 10		2174	0 12 5
	892	0 5 0		2182	0 18 5
	894	0 5 10		2186	0 19 15
	895	0 0 5		2187	1 4 10
	896	0 17 10		2188	0 3 15
	897	0 0 5		7138	0 15 10
3. Katoghan	506	0 15 10		7139	0 2 0
	507	0 1 0		7140	0 10 0
	508	0 4 0		7153	0 0 5
	509	0 19 0		7154	0 6 10
	714/2	1 10 10		7449	0 19 5
	715/1	0 1 5		7450	0 7 5
	715/2	0 19 5		7451	0 4 0
	722	1 6 15		7453	0 7 0
	724	1 14 15		7454	0 4 0
	727	0 0 5		7455	0 4 0
	1073	0 2 0		7456	0 4 10
	1074	0 8 0		7457	0 4 0
	1075	0 2 15		7476	1 6 10
	1076	0 15 15		7477	0 8 5
	1079	0 10 10		7478/2	0 6 10
	1081/1	0 13 0		7483	0 11 0
	1084	0 5 0		7484	0 1 0
	1085	0 7 10		7487	0 6 10
	1086	0 7 0		7488/2	0 0 5
	1303	0 2 0		7489	0 3 0
	1304	0 7 0		7490	0 5 15
	1305	0 6 15		7565	0 10 5
	1309	1 15 5		7566	0 2 0
	1338/1	1 14 0		7567	0 3 0
	1340	0 7 10		7568	0 7 5
	1341	0 5 15		7571	0 6 5
	1762	0 4 0		7572	0 6 10
	1784	1 7 0		7573	0 7 0
	1788	0 0 5		7574	0 4 15
	1789	0 3 15		7575	0 0 10
	1790	0 6 5		7576	0 13 5
	1792	0 8 0		7593	0 7 10
	1793	0 5 10		7594	0 6 10
	1794	0 0 10		7595	0 5 0
	1795	0 10 5		7597	0 1 0
	1796	0 6 0		7598	0 5 0
	1797	0 8 5		7600	0 10 0
	1799	0 0 5		7601	0 5 0
	1800	0 0 5		7602	0 13 0
	1801	0 4 10		7603	0 17 0
	1802	0 1 5		8098	0 15 0
	1805	0 4 0		8101	0 6 15
	1806	0 4 5		8102	0 11 0
	1807	0 1 10		8103	0 5 10
				8104	0 2 10

Village	Survey No.	Extent	Village	Survey No.	Extent
		B. B. B.			B. B. B.
3. Katoghan—contd.	8110	0 7 10	6. Hardon—contd.	3052	1 2 5
	8111	0 12 0		3053	0 7 0
	8112	0 18 10		3105	0 9 15
	8113	0 1 0		3107	0 4 15
4. Chak Katoghan	392	0 5 5		3108	0 18 10
	395	0 1 0		3138	1 11 5
	398	0 9 0		3247	0 7 5
	399	0 3 0		3248	0 9 0
	401	1 2 0		3259	0 8 10
	403	0 0 5		3260	0 6 10
	411/1	0 6 0		3261	0 5 5
	411/2	0 6 0		3263	0 1 10
	412	0 3 0		3285	0 6 0
	413/2	0 15 0		3286	0 8 0
5. Sujarai	988	2 0 1		3287	0 8 15
	989	0 17 5		3288	0 4 5
	990	0 10 5		3315	0 4 10
	997	0 5 5		3316	0 3 15
	999	0 17 0		3317	0 2 5
	1002	0 6 0		3318	0 8 5
	1006	0 11 5		3319	0 3 0
	1009	0 8 10		3320	0 3 10
	1013	0 7 5		3321	0 1 10
	1015	0 13 10		3322	0 12 0
	1016	0 8 0		3324	0 0 5
	1017	0 6 5		3325	0 7 5
	1018	0 0 5		3326	0 6 10
6. Hardon.	1334	0 3 15		3327	0 3 10
	1352	0 8 0		3328	0 4 5
	1363/2	0 7 15		3329	0 4 0
	1375	0 1 5		3331	0 4 0
	1376	0 4 10		3333	0 5 5
	1377/1	0 4 5		3334	0 4 5
	1378	0 8 0		3335	0 2 10
	1379	0 9 15		3336	0 2 15
	1380/2	0 2 0		3337	0 7 5
	1385/1	0 0 5		3338	0 1 10
	1386/1	0 8 5		3339	1 4 5
	1386/2	0 1 10		3340	0 16 10
	1387	0 1 10		3341	0 2 0
	1388	0 7 15		4336/3138	0 4 15
	1410	0 12 0		4338/1351/1	0 3 10
	1411	0 18 0		4379/1370	0 2 0
	1412	0 7 10	7. Sahzadpur Khaga .	1207	0 3 10
	1413	0 4 15		1212	0 4 0
	1414	0 2 0		1213	0 0 15
	1415	0 10 0		1214	0 0 5
	1418	0 1 0		1215/3	1 9 0
	1419	0 2 5		1225/1	0 13 0
	3008/2	1 12 0		1225/2	0 18 0
	3009	0 5 10		1226	0 18 0
	3010	0 4 5		1227/2	0 4 0
	3011	0 3 5		1229/1	1 15 0
	3022	1 2 15		1230	0 6 5
	3028	0 14 15		1231/1	0 9 0
	3029	0 6 0		1232	0 3 15
	3030/2	0 7 0		1234/1	0 16 10
	3033/2	0 16 0		1234/2	0 6 5
	3039/1	0 12 0		1234/3	0 4 0
	3040	0 10 0		1236	0 6 10
	3041	0 9 15		1237	0 8 0
	3051	0 9 0		1238	0 0 10
				1239	0 6 0
				1244/1	0 6 5
				1244/2	0 16 15

Village	Survey No.	Extent.	Village	Survey No.	Extent.
		B.B.B.			B.B.B.
Sahzadpur Khaga— contd.	1245/1 1245/2 1267/2 1267/3 1268	o 8 o o 11 10 o 8 5 o 18 15 o 3 10	10. Kukara—contd.	555/6 555/5 555/7 556 577/1 577/2 557/4 558 559. 560 573/1 573/2 574 576 577/1 577/2 577/3 578 579 580 585/5 585/6	o 7 10 o 1 o o 11 10 o 3 10 i 3 o o 16 o o 6 10 o 4 o o 8 o o 2 10 o 16 5 o 13 o o 5 5 o 10 o 7 o i 2 o o 10 o 1 o o 2 5 o 3 o o 9 o i 6 o
8. Pambhi Pur	416 422 424 425 426 427 428	o 10 10 o 17 o o 4 15 o 9 10 o 4 5 i 3 o o 10 10	11. Teni	1631 1632 1661 1663 1664 1665 1666 1679 1680 1681 1682 1687/1 1696 1697 1698 1700 1701 1702 2500 2501/1 2502 2509 2511 2512 2513 2514 2526/2 2527 2528 2548 2550 2549 2551 3751 3754 3755 3756 3770 3771 3772 3773 3774 3775	o 1 o o 17 10 o 7 o o 4 o o 9 o o 17 o o 15 o o 1 15 o 13 o o 6 15 o 18 10 o 2 10 3 7 o o 4 10 o 0 2 o 6 o o 3 10 i 4 10 o 2 10 o 9 o o 14 o o 0 15 o 19 o o 0 15 o 17 5 o 10 o i 9 5 o 9 o o 6 o o 8 10 o 9 10 i 5 5 o 14 o o 4 o i 9 10 o 12 o o 12 o o 2 10 o 3 5 o 8 5 o 3 o o 8 o
9. Kukari	314/1 331/2 331/5 332 333/2 334 335 339 340 341 342 343 344 354 355 356 358 400 409 410 411 412 413	o 15 10 o 6 5 o 18 10 o 11 10 o 2 o o 3 o o 8 o o 6 o o 9 15 o 0 5 o 1 10 o 2 o o 2 10 o 13 10 o 12 o o 0 10 o 1 10 o 0 10 o 2 10 o 4 o o 3 o o 3 5 o 3 15	10. Kukara	252/1 252/2 253 254 255 256 258 283/1 283/3 284 285 286 287 283/3 385/1 385/2 385/3 386 387/1 388 389 390 491/4 554 555/2 555/1 555/3 555/4	o 11 o o 12 o o 3 10 o 5 o o 4 10 o 0 15 o 5 5 i 5 5 o 5 10 o 1 10 o 2 10 o 1 o o 1 10 i 15 5 o 17 o o 0 5 o 1 o o 2 10 o 9 o o 3 o o 16 5 o 12 5 o 19 o i 12 5 o 2 o o 5 o o 7 o o 0 10

Village	Survey No.	Extent.	Village	Survey No.	Extent
		B.B.B.			B.B.B.
II. Teni—contd.	3776	o 0 15	II. Teni—contd.	4283	o 2 10
	3777	o 3 10		4284	o 1 10
	3778	o 3 10		4285	o 1 10
	3779	o 4 0		4286	o 1 10
	3826	o 4 0		4287	o 1 5
	4025	o 3 0		4288	o 7 10
	4026	o 7 15		4289	o 8 0
	4027	o 4 15		4481	1 11 5
	4028	o 4 10		4482/1	3 16 10
	4033	o 0 2		4482/2	o 8 0
	4034	o 3 0	12. Majh Teni	116	o 3 10
	4035	o 2 0		117	o 3 10
	4036	o 0 2		119	1 14 0
	4037	o 5 0		279	o 13 5
	4038	o 5 0		280/1	o 4 0
	4039	o 4 0		280/2	o 19 0
	4040	o 1 5		281	o 4 15
	4062	o 0 3		282	o 6 0
	4065	o 3 0		285/1	1 6 0
	4066	o 8 0		286/1	1 9 0
	4067	o 12 10		304	o 7 0
	4070	o 1 5		305	o 9 0
	4071	o 1 10		306	o 3 10
	4072	o 1 0		310	o 10 10
	4073	o 2 0		312	o 9 10
	4074	o 3 10		384	o 4 0
	4075	o 4 5		385/1	o 2 15
	4076	o 2 10		386	o 8 0
	4078	o 1 0		387	o 0 10
	4225	o 11 0		388	o 2 10
	4226	o 7 10		389	o 0 2
	4227	o 1 0		390	o 6 0
	4228	o 0 15		391	o 13 10
	4238	o 3 10		392	o 0 1
	4239	o 4 0		393	o 4 0
	4242	o 3 10		442	1 18 5
	4243	o 3 0		443	o 16 10
	4244	o 5 10		451/1	o 8 0
	4245	o 11 0		451/2	o 11 0
	4246	o 8 0		452	o 5 10
	4247	o 0 4		454	o 6 0
	4248	o 0 2		455	o 6 0
	4249	o 3 0		460	1 3 0
	4281	o 2 0			
	4282	o 0 15			

[No. 31/50/63-ONG.]

S.O. 2926.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum between Barauni Refinery in Bihar State and Haldia Port in Calcutta in West Bengal State, a pipeline should be laid by the Indian Refineries Limited and for the purpose of laying such a pipeline, it is necessary to acquire the right of user in the land described in the Schedule annexed hereto;

2. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipeline under the land to the competent authority at 9, Syed Amir Ali Avenue, Calcutta-17 in the office of the Indian Refineries Limited. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

ADDENDUM TO:

State—West Bengal

Distt. Burdwan

Tehsil/Thana—Memari

Village	Survey No. (Plot No.)	Extent (Area)	Village	Survey No. (Plot No.)	Extent (Area)
Konyarpara, J.L. 41	114 115 116	.01 .20 .005		117 851	.19 .47

[No. 31/33/63-ONG.]

S.O. 2927.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum between Barauni Refinery in Bihar State and Haldia Port in Calcutta in West Bengal State, a pipeline should be laid by the Indian Refineries Limited and that for the purpose of laying such a pipeline, it is necessary to acquire the right of user in the land described in the Schedule annexed hereto;

2. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipeline under the land to the competent authority at 9, Syed Amir Ali Avenue, Calcutta-17 in the office of the Indian Refineries Limited. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

ADDENDUM TO VILLAGE JOT GHANASHYAM, J. L. 240,

State—West Bengal

Distt.—Midnapur

Tehsil/Thana—Daspur

Village	Survey No. (Plot No.)	Extent (Area)	Village	Survey No. (Plot No.)	Extent (Area)
Jot Ghanashyama, J.L. 240.	7324 7325	.05 .07		7322 7323	.005 .005

[No. 31/33/63-ONG(ii).]

S.O. 2928.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum between Barauni Refinery in Bihar State and Haldia Port in Calcutta in West Bengal State, a pipeline should be laid by the Indian Refineries Limited and that for the purpose of laying such a pipeline, it is necessary to acquire the right of user in the land described in the Schedule annexed hereto;

2. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipeline under the land to the competent authority at 9, Syed Amir Ali Avenue, Calcutta-17 in the office of the Indian Refineries Limited. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE.

*ADDENDUM TO VILLAGE RADHABALLAVPUR, J. L. 137 & BHUBANESWARPURI
J. L. 146,*

State—West Bengal

Distt.—Midnapur

Tehsil/Thana—Tamluk

Village	Survey No. Plot No.	Extent (Area)	Village	Survey No. Plot No.	Extent (Area)
Radhaballavpur, J. L. 137.	582	.13	Bhubaneswarpur, J. L. 146.	98	.05

[No. 31/33/63-ONG(iii).]

S.O. 2929.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum between Barauni Refinery in Bihar State and Haldia Port in Calcutta in West Bengal State, a pipeline should be laid by the Indian Refineries Limited and that for the purpose of laying such a pipeline, it is necessary to acquire the right of user in the land described in the Schedule annexed hereto;

2. Now, therefore in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipeline under the land to the competent authority at 9, Syed Amir Ali Avenue, Calcutta-17 in the office of the Indian Refineries Limited. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

ADDENDUM TO :

State—West Bengal

Distt.—Hooghly

Tehsil/Thana—Jangipara

Village	Survey No. (Plot No.)	Extent (Area)	Village	Survey No. Plot No.	Extent (Area)
Tripan, J.L. 20	21	.09	Bilara, J.L. 11—c ⁿ td.	594	.005
	22	.05		637	.02
	34	.02		638	.16
	35	.18		639	.17
	39	.03		643	.03
	49	.07		644	.15
	50	.10		645	.20
	51	.02		646	.03
	52	.10		647	.26
	53	.35		648	.08
	58	.04		650	.13
	403	.08		651	.20
	404	.10		652	.07
	405	.16		656	.04
				663	.08
Bilara, L. 11	576	.05	Gultia, J.L. 7	72	.02
	578	.32		271	.12
	579	.18		272	.20
	580	.03		273	.05
	584	.08		275	.56
	586	.23		278	.10
	587	.14		279	.35
	588	.01			
	593	.03			

Village	Survey No. (Plot No.)	Extent (Area)	Village	Survey No. (Plot No.)	Extent (Area)
Vill Gultia, J.L. 7— <i>contd.</i>	280	.30	Rahimpur— <i>contd.</i>	939	.03
	284	.25		942	.01
	289	.25		946	.02
	290	.25		947	.05
	293	.01		948	.03
	320	.55		949	.12
Rahimpur, J.L. 23	929	.02		950	.02
	930	.05		951	.05
	931	.08		952	.06
	932	.13		955	.02
	933	.10		956	.08
	934	.10		958	.12
	936	.03		959	.07
	937	.18		960	.01
	938	.04		962	.05
				964	.01

[No. 31/33/63-ONG(iv).]

ORDER

New Delhi, the 1st October 1963

S.O. 2030.—In exercise of the powers conferred by sub-section (4) of section 6 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962, (50 of 1962), the Central Government hereby directs that the right of user in the lands specified in the Schedule to the notification of the Government of India in the Ministry of Mines and Fuel No. S.O. 2562, dated the 27th August, 1963, published in the Gazette of India, in Part II, in section 3, in sub-section (ii), dated the 7th September, 1963, (and reproduced in the Schedule annexed to this Order), shall on and from the Third day of October, 1963, vest, free from all encumbrances, in the Oil and Natural Gas Commission instead of in the Central Government.

SCHEDULE

State—Gujarat

District—Kaira

Tehsil—Cambay.

Village	Survey No.	Acre	Guntha	Sq. Yds.	Sq. Ft.
Lunaj	272	0	4	41	5
Sokhada	23	0	18	62	0
	204	0	3	97	0
	182/2	0	3	97	0
	181/I	0	1	39	0
	181/2	0	18	102	0
	179	0	19	67	6
	178	0	17	69	6
	171/I	0	11	115	6
	170/2	0	0	36	1
	171/3	0	9	77	6
	172	0	8	65	3
	177/I	0	0	3	3
Neza	87	0	9	64	3
	75	0	31	115	6
	76	0	0	15	8
	74	0	12	0	0
	25	0	29	21	2
	24	0	0	83	1
	26	0	28	0	0

Village	Survey No.	Acre	Guntha	Sq. Yds.	Sq. ft.
Neza—contd.	18	o	1	5	6
	27	o	14	52	6
	16	o	24	o	0
	14	o	12	14	6
	5	o	7	19	6
	328	o	21	112	3
	327/1	o	15	91	6
	325	o	10	110	0
	326	o	12	74	6
Cambay	484	o	5	11	0
	478	o	3	3	0
	487	o	20	14	4
	483	o	15	3	3
	477	o	29	60	4
	406/1	o	17	115	4
	396	o	6	35	2
	395	o	1	8	5
	394	o	7	32	2
	391	o	12	41	3
	348	o	1	79	0
	390	o	11	89	0
	380	o	20	o	0
	381	o	4	9	3
	379	o	15	48	3
	377	o	17	23	0
	375	o	12	48	0
	376	o	6	64	0
	355	o	18	62	0
	356	o	o	18	3
	370	o	18	22	0
	366/1	o	24	69	3
	366/2	o	7	19	6
	271/1	o	o	66	4
	287	o	29	77	6
Kansari	67/4	o	3	30	2
	57	o	22	84	6
	56	o	28	38	6
	54	o	8	5	3
	53/1	o	4	109	3
	53/2	o	11	o	0
Sakarpur	567	o	14	86	0
	566	o	3	57	0
	564	o	29	31	0
	563	o	14	72	6
	548	o	16	64	0
	540	o	7	39	6
	547	o	7	19	2
	546	o	15	118	3
	541/1	o	8	98	6
	541/2	o	6	14	0
	460	o	o	33	3
	455	o	10	63	3
	453	o	22	27	0
	454	o	17	43	0
	414	o	32	10	2
	415	o	17	103	0
	436	o	o	43	2
	434	o	20	86	6
	432	o	20	86	6
Nana Kalodra	233	o	4	109	3
	240	o	21	33	0
	12	o	23	77	0
	14/1	o	24	62	6
	14/2	o	18	68	6

Village	Survey No.	Acre	Guntha	Sq. yds.	Sq. ft.
Vasna	299	0	13	90	3
	300	0	18	21	3
	301	0	10	10	0
	302	0	11	146	0
	283	0	29	44	3
	306	0	33	90	3
	263	0	18	34	5
	262	0	1	105	6
	261	0	0	113	3
	264	0	10	33	3
	255	0	31	102	3
	233	0	17	96	3
	234	0	8	1	3
	243	0	5	1	6
	240	0	3	90	3
	242	0	26	9	5
	241	0	9	37	6
	164	0	22	18	0
	172	0	11	102	3
	100	0	5	115	0
	98	0	16	90	0
	99	1	3	117	0
	59	0	27	71	6
	361	0	29	131	0
	61	0	19	47	3
	62	0	3	30	3
Ralaj	675	0	1	105	6
	657	0	25	61	6
	658	0	4	6	6
	655	0	2	0	0
	653	0	2	58	0
	654/3	0	16	50	6
	647	0	5	70	5
	646	0	10	76	6
	642	0	1	45	6
	637/3	0	19	81	4
	635	0	3	97	0
	636	0	10	16	6
	1	0	1	15	1
	2	0	4	26	0
	14	0	13	25	7
	15	0	9	50	8
	16	0	5	17	2
	17	0	3	41	0
	18	0	0	31	1
	20	0	12	89	6
	21	0	13	40	3
	26	0	3	33	6
	28	0	0	11	1
	22	0	16	104	0
	150	0	2	98	0
	19	0	5	59	4
	177	0	12	41	3
	178/1	0	8	38	6
	180	0	10	0	3
	181/1	0	2	104	6
	181/2	0	2	4	7
	191/1	0	19	21	0
	191/2	0	2	91	3

Village	Survey No.	Acre..	Guntha	Sq. Yds.	Sq. Ft.
Rala	190	0	4	82	6
	187/1	0	14	46	0
	187/2	0	7	106	3
	187/3	0	2	104	6
	250	0	4	52	0
	248/1	0	5	61	6
	248/2	0	5	8	3
	210	0	11	42	3
	211	0	8	112	0
	246	0	4	49	3
	245	0	15	115	3
	244	0	6	114	0
	217	0	0	16	3
	243	0	418	105	3
	215	0	4	52	7
	216	0	16	21	7
Kalamsar	855	0	13	72	5
	854	0	1	35	0
	853	0	36	51	5
	851/1	0	11	92	8
	852	0	01	96	2
	850	0	0	36	4
	848	1	1	45	6
	824	0	36	13	1
	834	0	1	46	3
	833	0	24	51	5
	825	0	6	35	6
	832	0	18	35	3
	830	0	14	19	3
	829	0	16	97	3
	890	0	14	99	3
	892	0	13	73	6
	915/1	0	16	64	0
	915/2	0	16	30	6
	916	0	7	8	3
	918	0	18	102	0
	921	0	9	117	6
	922	0	6	7	3
	925	0	13	33	6
	926	0	25	15	0
	937	0	10	34	6
	939	0	23	97	0
	941	0	15	104	7
	942	0	3	39	5
	1007	0	16	64	0
	1009/2	0	16	24	0
	1009/3	0	19	114	0
	1164	0	25	55	0
	1163	0	18	108	6
	1137	0	25	55	0
	1138	0	21	62	6
	1139	0	16	57	3
	1140	0	19	61	0
	1148	0	8	32	0
	1149	0	10	43	7
	1150	0	12	90	2
	1145	0	1	10	6
	1152	0	15	65	0
	1155	0	20	42	2
	1158	0	3	74	7
	1160	0	17	53	6
	1161	0	31	40	1

Village	Survey No.	Acre	Guntha	Sq. Yds.	Sq. Ft.
Kalamsar—contd.	1162	0	13	63	6
Haripura	501	0	3	15	8
	2/4				
	502	0	13	61	1
	2/3				
Dhuwaran	208	0	1	8	1
	209	0	14	23	4
	210	0	3	13	5
	610	0	7	75	5
	611	0	8	70	1
	612	0	10	63	3
	244	0	23	25	8
	246	0	16	84	0
	253/3	0	16	34	0

[No. 31/38/63-ONG.]

ERRATUM*New Delhi, the 5th October 1963*

S.O. 2931.—In the Schedule to the notification of the Government of India in the Ministry of Mines and Fuel S.O. No. 2139 dated the 22nd July, 1963 published in Part II Section 3 sub-section (ii) of the Gazette of India dated the 3rd August, 1963 at page 2443 in the first line from top

For 4293 Read 4193

[No. 31/47/63-ONG.]

B. SUBBA RAO, Under Secy.

MINISTRY OF INDUSTRY**ORDER***New Delhi, the 7th October 1963*

S.O. 2932.—In exercise of the powers conferred by sub-section (1) of section 25 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby directs that the power exercisable by it under section 19 of that Act shall for the purpose of ascertaining the reasonableness of the price fixed for any drug by the manufacturers of drugs, also be exercisable by the Chairman of the Technical Committee constituted to examine the prices of certain essential drugs and their formulations, in the resolution of the Government of India in the Ministry of Health No. F. 12-6/63-D, dated the 3rd September, 1963.

[No. 3(37)/63-Ch. III.]

S. RANGANATHAN, Secy.

New Delhi, the 7th October 1963

S.O. 2933/IDRA/6/16.—In exercise of the powers conferred by Section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), read with Rule 5(1) of the Development Councils (Procedural) Rules, 1952, the Central Government hereby appoints, till the 8th September, 1965, Shri S. L. Bhatte to be a member of the Development Council established by the Order of the Government of India in the Ministry of Industry No. S.O. 2625, dated the 9th September, 1963, for the scheduled industries engaged in the manufacture or production of Automobiles, Automobile Ancillary Industries, Transport Vehicle Industries, Tractors and Earth Moving Equipment and directs that the following amendment shall be made in the said Order, namely:

In the said Order, after entry No. 29 relating to Shri K. Srinivasan, for following entry shall be inserted, namely:—

30. Shri S. L. Bhatte, Plant General Manager, M/s. Hindusthan Motors Ltd., P.O. Uttarpara (E. Rly.), Distt. Hooghly (West Bengal).

[No. 1(8)/L.Pr./63.]

S. P. KRISHNAMURTHY, Under Secy.